

**REQUEST FOR PROPOSAL
RFP No. 19-03**

**Notice to Proposers for
Information Systems General and
Business Process Application Controls Review of FI\$Cal**

December 3, 2018

You are invited to review and respond to this Request for Proposal (RFP): Information Systems General and Business Process Application Controls Review of FI\$Cal, RFP No. 19-03 for fiscal years ending June 30, 2019 and June 30, 2020, with an option to extend for fiscal year ending June 30, 2021.

Proposers interested in responding to this RFP are encouraged to notify the California State Auditor's Office (State Auditor) indicating their interest. This will ensure that your firm/team receives supplemental or updated information that may be released subsequent to the State Auditor's formal issuance of the RFP. Provide the firm's name, address, and contact information by December 18, 2018. Send by email, postcard, or letter to Ms. Donnell Duclo.

In the opinion of the State Auditor, this RFP is complete and without need of explanation. However, if you have questions, or should you need any clarifying information, the contact person for this RFP is:

Ms. Donnell Duclo, Business Services Analyst
California State Auditor
621 Capitol Mall, Suite 1200
Sacramento, CA 95814
916-445-0255
E-mail: Proposals@auditor.ca.gov

Please note that no verbal information given will be binding upon the State Auditor unless such information is issued in writing as an official addendum.

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REQUEST FOR PROPOSAL

RFP No. 19-03

**Information Systems General and
Business Process Application Controls
Review of FI\$Cal**

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I. PURPOSE AND DESCRIPTION OF SERVICES

In this Request for Proposal (RFP), the California State Auditor (State Auditor) solicits qualified and independent proposers who will conduct an information systems general and business process application controls review of the Financial Information System for California (control review), as well as key interfaces and other supplemental applications (when applicable). This control review will encompass an evaluation of the design and implementation of all *relevant controls*, as defined by the American Institute of Certified Public Accountants (AICPA), *Statements on Auditing Standards* (AU-C section 315), and the United States Government Accountability Office's (GAO) *Federal Information Systems Control Audit Manual* (FISCAM), to determine whether such controls can effectively prevent, or detect and correct, errors or fraud that could result in material misstatements to the State of California's *Comprehensive Annual Financial Report* (CAFR). The State Auditor will rely upon the results of the control review when determining the nature, timing, and extent of further planned audit procedures.

The services requested through this RFP require the performance of a control review of fiscal years ending June 30, 2019 and June 30, 2020. The State Auditor may exercise an option to extend the contract to include a third fiscal year ending June 30, 2021. The State's fiscal year begins on July 1 and ends on June 30.

A. Background

1. Through a partnership among the State Controller's Office, the State Treasurer's Office, and the departments of Finance and General Services, the State of California (State) is currently developing and implementing the Financial Information System for California (FI\$Cal), an enterprise resource planning system. FI\$Cal will encompass the functional areas of budgeting, accounting, procurement, and cash management. When fully implemented, the State will integrate the financial management activities into FI\$Cal, a Hyperion and PeopleSoft Financial application.
2. The State relies upon information from FI\$Cal to produce its CAFR. The State Auditor performs an annual independent audit of the State's CAFR in accordance with the AICPA's *Statements on Auditing Standards*, as well as the standards applicable to financial audits contained in *Government Auditing Standards* (GAGAS), issued by the Comptroller General of the United States of America. For fiscal year ending June 30, 2017, FI\$Cal had a material impact on a single fund at the Department of Resources Recycling and Recovery. As a result, the State Auditor previously contracted for a review of controls pertinent to this fund. In addition, other third parties have conducted reviews of FI\$Cal using National Institute of Standards and Technology (NIST) Special Publication 800-53 guidance.
3. Pursuant to Government Code, section 11864, the State Auditor also independently monitors the FI\$Cal project throughout its development. The State Auditor's independent monitoring includes, but is not limited to, monitoring the contracts for Independent Project Oversight (IPO) and Independent Verification

and Validation (IV&V) services, and assessing whether concerns about the project raised by the IPO and IV&V staff are appropriately addressed by the FI\$Cal steering committee and the FI\$Cal project. The State Auditor is required to report on the project's status at least annually. Thus far, 15 reports have been issued and are available at [California State Auditor reports](http://www.auditor.ca.gov/reports) (<http://www.auditor.ca.gov/reports>).

4. Other important information about the FI\$Cal project can be found at [FI\\$Cal](https://fiscal.ca.gov/) (<https://fiscal.ca.gov/>), including the [Special Project Reports](https://fiscal.ca.gov/library/) (<https://fiscal.ca.gov/library/>) issued by the State. Further, the [Department of Finance](http://www.dof.ca.gov/Budget/Fiscal_Resources_For_Budget/) presents FI\$Cal related information on its website (http://www.dof.ca.gov/Budget/Fiscal_Resources_For_Budget/). Proposers are encouraged to review these websites and reports.

B. Statement of Work

1. The State Auditor seeks a responsible Contractor to test the design and operating effectiveness of relevant controls. The criteria used as the basis for this control review will be FISCAM, a methodology for performing information system control audits in accordance with GAGAS which is also consistent with the GAO's Financial Audit Manual and NIST 800-53, where information system controls are significant to the audit objectives. Consideration must be given to any additional requirements specific to the State as outlined in the State Administrative Manual, sections 5300 through 5365.3, as required by Government Code, section 11549.3. All work performed under this engagement must comply with AICPA standards and GAGAS standards applicable to financial audits. Lastly, the Contractor will cooperate with the State Auditor's efforts to comply with the AICPA's requirements outlined in AU-C section 620; Using the Work of an Auditor's Specialist.
2. The State Auditor anticipates the scope of the control review to include the control functionalities of the State Controller's Office and State Treasures' Office, an approach called the "Integrated Solution," and 14 other state departments, located in Sacramento, California, that are actively transacting to varying degrees in FI\$Cal using the FI\$Cal Business Processes. Proposers may refer to **Attachment E** for a listing of state entities expected to be included in this control review and Table 1 for a listing of the FI\$Cal Business Processes. Further, for each fiscal year the scope of work includes follow-up work on all prior year(s) findings.

Table 1. FI\$Cal Business Processes

Business Process Number	Business Process Description	Business Process Number	Business Process Description
AM1	Acquire Assets	PC3	Collect, Distribute, and Price Cost
AM2	Maintain Assets	PC4	Project Capitalization
AM4	Transfer Assets	CM2	Reconcile Bank Statements (Department)
AM6	Retire/Reinstate Assets	AP1	Establish and Maintain Vendors
AM7	Leasing	AP2	Enter and Process Vouchers
AM8	Asset Depreciation and Month End	AP3	Run Pay Cycle Checks
AR1	Set up and Maintain Customers	AP4	Matching (Integration with Procurement)
AR2	Generate and Adjust Invoices	ePro1	Manage Solicitations
AR3	Enter and Maintain Receivables	ePro2	Administer Vendor Contracts
AR4	Process and Adjust Deposits	ePro3	Create and Approve Requisitions
AR5	Collect Receivables	ORF	Enter ORF Prepaid Vouchers
GL1	Enter and Process Journals	ORF	Enter ORF Regular Vouchers
GL2	Enter and Process Budget Journals	ORF	Enter ORF Regular Vouchers Salary Advances
CA1	Create and Amend Contracts	ORF	Maintain Payment Checks (Void, Stop, Escheat)
CA2	Process Billing and Revenue	PO2	Manage Purchase Order
GM1	Generate and Maintain Grants	PO3	Receive Goods and Services
PC1	Create and Maintain Projects	PO4	Process Procurement Card Transactions
PC2	Create and Maintain Project Budgets		

3. If the successful proposer concludes there are considerable design deficiencies in the relevant control(s) as to render them unreliable in preventing or detecting material misstatements to the CAFR, the State Auditor reserves the right to cease further control testing.
4. The performance of the control review will include the specific FISCAM areas as outlined below.

(a) General Controls

- (i) Security Management
- (ii) Access Controls
- (iii) Configuration Management
- (iv) Segregation of Duties

(b) Business Process Contingency Planning Application Controls

- (i) Application Security Management
- (ii) Business Process Controls
- (iii) Interface Controls
- (iv) Data Management Systems Controls
- (v) Segregation of Duties

C. Contractor Responsibilities

The Contractor is responsible for the following items, as approved by the State Auditor.

1. Plan the control review.
2. Schedule the entrance and exit conferences with the appropriate state entities.
3. Schedule the planning and scoping meetings with key engagement stakeholders and develop a detailed schedule of interviews.
4. Include State Auditor staff in discussions with the State addressing the design of relevant controls, operational effectiveness of these designs, any operational deviations from such designs and any changes being considered to address potential control deficiencies.
5. Follow up on previous engagements where the audit findings are significant to the objectives of the control review of FI\$Cal, the Department of FI\$Cal, and the Department of Resources Recycling and Recovery. Includes evaluating and documenting the procedures used and conclusions reached when assessing the status and effectiveness of corrective actions taken. Further, determine the extent to which testing the implementation of the corrective actions is applicable to the control review's objectives.
6. Prepare the working papers in accordance with GAGAS and deliver copies of all working papers to the State Auditor as specified in the Standard Agreement. The

Contractor shall gather and provide sufficient, competent, and relevant evidence so an experienced independent person could review the work and reach the same conclusions. Working papers shall include source, purpose, scope and methodology, analysis, conclusion, sufficient cross-references, as well as all documents supporting the Contractor's written report. Working papers should also identify the individuals responsible for their preparation and review. Lastly, the working papers will be provided in a manner that allows efficient integration with the State Auditor's working paper management solution.

7. Complete the working papers incrementally and make them available to the State Auditor for review. Include project documentation such as checklists, or flowcharts obtained or created during the engagement.
8. Prepare and document findings to include the evaluation of each control weakness to determine whether, individually or in combination, it constitutes a significant deficiency or material weakness. Findings must address the types of errors the control was designed to prevent, or detect and correct, and should take into account any manual or automated mitigating controls. Additionally, obtain comments and corrective action plans from each relevant state entity and develop a reviewer response addressing the comments.
9. Collaborate with State Auditor staff by conducting monthly meetings (or as required) to discuss progress in conducting the control review. Discussions should also include any unique issues that may have surfaced in the design or implementation of relevant controls. The State Auditor will use this information to determine whether a change in the control review scope is warranted or whether to cease further testing.
10. Meet all deadlines mutually agreed upon between the Contractor and State Auditor. The Contractor acknowledges that the State Auditor is relying on the timely completion of the control review and related documentation in planning its audit of the CAFR and acknowledges that it is critical that the reports are delivered on schedule.
11. Prepare draft and final reports as described in Paragraph E. Deliverables.
12. The State Auditor may request additional services during the term of the contract. Requests will be in writing and mutually approved by the State Auditor and Contractor.

D. State Auditor Responsibilities

The State Auditor will retain responsibility for the following:

1. Annually, provide a list of State entities and funds whose financial statements have a material impact on the CAFR.
2. Review the Contractor's audit plan and work collaboratively with the Contractor to revise if necessary.
3. Participate in key engagement meetings such as planning and scoping meetings.

4. Review the Contractor's working papers.
5. Review the draft reports.
6. Review the final deliverables.
7. Rely on the results of this control review when determining the nature, timing and extent of further planned audit procedures.

E. Deliverables

The Contractor will provide the State Auditor with the deliverables listed below. Each Work Plan Requirement described in Section III, Paragraph E must address the items below and include a proposed delivery date.

1. Detailed schedule of interviews to enable State Auditor personnel participation.
2. Proposed audit plan.
3. Preliminary risk assessment.
4. Final audit plan for approval by State Auditor.
5. All relevant working papers.
6. The draft reports are due June 30, 2019 and June 30, 2020. If the State Auditor exercises the optional third year, the draft report is due June 30, 2021.
7. The final reports are due August 15, 2019, August 17, 2020. If the State Auditor exercises the optional third year, the final report is due August 16, 2021.
8. Both the draft and final reports shall include the following:
 - (a) For statewide issues, a Section/Chapter describing deficiencies, individually or in combination, which would constitute statewide significant deficiencies or material weaknesses.
 - (b) For agency-specific issues, a Section/Chapter for each state entity reviewed describing deficiencies, individually or in combination, which would constitute significant deficiencies or material weaknesses for each state entity under review.
 - (c) Report format:
 - (i) Executive Summary
 - (ii) Objective
 - (iii) Scope
 - (iv) Methodology
 1. Planning
 2. Assessment of Work Plan
 - (v) Testing Methodology
 1. Test of Design Suitability
 2. Tests of Operating Effectiveness
 - (vi) Sampling Methodology
 - (vii) Evaluation of Findings
 - (viii) Findings, Recommendations, and Management Perspective

II. QUALIFICATIONS AND EXPERIENCE

The proposer and all proposed personnel (excluding administrative support) performing professional services under the contract must have the qualifications and experience identified below.

A. Minimum Qualifications and Experience

1. Experience in performing control reviews of enterprise resource planning systems used by complex governmental or private organizations in the areas of budgeting, accounting, procurement and cash management.
2. Active licenses/certifications relevant to the performance of a control review, such as Certified Information Systems Auditor or Certified Public Accountant.
3. Three examples of similar types of contracts in which the proposer conducted control reviews of enterprise resource planning systems of complex governmental or private organizations. The listing should include:

(a) Title of the project

(b) Name of the entity

(c) Brief description of the project

(d) Name and telephone number of the entity's contracting officer

By furnishing this information, the proposer gives permission to the State Auditor to contact these entities regarding the proposer's past performance. If the firm is newly organized, a listing of projects completed by lead personnel during previous employment may be acceptable. Moreover, if the proposal is a joint venture, the experience of the joint venture may be combined.

4. Proof that the proposer, if a corporation, is in good standing and qualified to conduct business in California. Proposals must include a copy of a Certificate of Status issued by the California Secretary of State. For non-profit proposers, provide proof of nonprofit status.
5. Copies of current business licenses, professional certifications or other relevant credentials.
6. Proof of financial solvency or stability (financial statements for the most recent two years; tax returns; records showing business base and forecast).
7. Identify by name the lead personnel projected to be assigned to the engagement. Contract terms will not permit substitution of lead personnel without prior written approval of the State Auditor.

8. Include a list of prospective subcontractors proposed to use in performing the work, including a listing of the individuals the subcontractor proposes to assign to the engagement and the location where the work will be performed. The State Auditor, in her sole discretion, reserves the right to reject subcontractors. Subcontractors, if used, shall be subject to all terms, conditions, and qualifications required by this RFP.

B. Desirable Qualifications

1. Demonstrated knowledge in performing control reviews in accordance with FISCAM and of financial audit techniques and control procedures.
2. Ability to perform significant portions of the control review in Sacramento, California.

III. PROPOSAL REQUIREMENTS AND INFORMATION

Proposers may include any relevant information and pertinent exhibits in the proposal. Proposals are to be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of this solicitation letter. It may include any relevant information and pertinent exhibits. Emphasis should be on conformance to the instructions and responsiveness to the requirements described herein, and on completeness and clarity of content.

A. Key Action Dates

The State Auditor will use her best efforts to adhere to the dates in Table 2. However, the State Auditor reserves the right to amend the time schedule, as deemed necessary. Changes will be accomplished by addendum.

Table 2. Key Action Dates

Action	Time	Date
Release of Request for Proposal		December 3, 2018
Questions Due	4:00 p.m.	December 12, 2018
Intent to Bid Postcard/Letter		December 18, 2018
Questions and Answers Posted	4:00 p.m.	December 19, 2018
Proposals Due	4:00 p.m.	January 4, 2019
Opening of Proposals		January 7, 2019
Evaluation Period		January 8, 2019 – January 11, 2019
Interviews		January 14-16, 2019
Notice of Intent to Award Posted In Lobby of State Auditor's Office and on Website		January 18, 2019
Contract Award and Execution		January 2019
Live-Scan/Fingerprinting		January 2019
Contract Work Begins (upon clearance of all Live-Scan/Fingerprinting)		January - February 2019
Contract Term Ends for Fiscal Year ending June 30, 2019 and June 30, 2020		June 30, 2021
State Auditor May Exercise Option to Extend Fiscal Year Ending June 30, 2021		Fall of 2020
Contract Term Ends for Fiscal Year Ending June 30, 2021		June 30, 2022

B. Questions and Answers

1. Proposers requiring clarification or further information on the intent or content of this RFP or on procedural matters regarding the competitive bid process may request clarification by submitting questions in writing. We will post question and answer sets to our website by the due date listed in Table 2, Key Action Dates. Clearly mark all questions with “Questions Relating to RFP No. 19-03.” Submit written questions as follows:

e-mail: Proposals@auditor.ca.gov
fax: (916) 327-0019
mail: California State Auditor
621 Capitol Mall, Suite 1200
Sacramento, CA 95814

Attention: Ms. Donnell Duclo, Business Services Analyst
Questions Relating to RFP No. 19-03

2. If disclosing questions to other proposers would compromise proprietary information, a proposer may seek clarification or further information on the content of the RFP by marking the question packet “CONFIDENTIAL” and submitting questions as described above. The proposer must explain why his/her questions are sensitive in nature. If the State Auditor concurs that disclosure of the question or answer would expose the proprietary nature of the proposal, the question will be answered and both the question and answer will be kept in confidence. If the State Auditor does not concur with the proprietary aspect of a question, the question will not be answered in this manner and the proposer will be so notified.

C. Confidentiality

1. The State Auditor appreciates a proposer’s desire to treat certain documents as confidential.
2. If the State Auditor receives a request to disclose data claimed by the proposer to be confidential, the State Auditor will notify the proposer of the request and state that the documents are under review to determine whether information was correctly identified as confidential. If there is any question of whether specific information is confidential, the State Auditor will contact the person(s) identified in the RFP to obtain a justification and statement of why the information is confidential.
3. Any proposal that contains confidential information shall be prominently marked “CONFIDENTIAL” and shall identify the reasonable legal basis for confidentiality. The State will deem those portions of the proposal not marked “CONFIDENTIAL” releasable under the California Public Records Act.
4. Proposer shall not disclose data or disseminate the contents of any preliminary or final work product or records, documents, or information used in support of the work product without the written permission of the State Auditor.

5. With the exception of comments made about the work product to the State Auditor or her staff, proposers shall not make comments to any individual, including, but not limited to, any member of the media regarding the work product, nor shall proposer comment on the State Auditor's actions regarding the work product, without the prior written consent of the State Auditor.

D. Independence/Conflict of Interest Disclosure

1. The proposer must disclose and, if awarded a contract, shall have a continuing duty to disclose any financial, business, or other relationship of the proposer, subcontractor, or individual employees that may have an impact on the work performed.
2. In this disclosure, the proposer should include information regarding situations that might create an appearance of a lack of independence, regardless of whether the proposer believes that the situation creates an actual conflict of interest, and how the proposer intends to manage such situations. If the proposer believes that there may be an appearance of a conflict of interest or lack of independence based on any previous or ongoing work the proposer has performed, the proposer shall specifically address how it plans to address and manage that appearance, including, but not limited to, how appropriate safeguards would be applied by the proposer to guard against that appearance.
3. If the proposer believes that no conflict of interest or appearance of lack of independence as described above exists, then a statement to that effect must be made in the proposal.
4. The State Auditor shall have the right to disqualify or terminate a proposer if she believes that the best interests of the State require that the proposer be disqualified or terminated because the proposer has a conflict of interest or because a situation exists that creates the appearance of a lack of independence and also to disqualify any proposed personnel on that basis.
5. In accordance with State Auditor policy, any proposer selected to provide services to the State Auditor will be required to submit an Independence Questionnaire/Conflict of Interest Disclosure (**Attachment E**).

E. Work Plan Requirements

1. The proposer shall develop a work plan or schedule for task completion. The State Auditor is relying on the timely completion of this control review and related documentation in planning its audit of the CAFR.
2. The work plan or schedule should identify each major task, necessary subtask, and/or specific milestones by which progress can be measured and payments made. The proposal shall include a description of the overall approach to providing the services described in Section I, Purpose and Description of Services. The proposal must include specific techniques, administrative and operational management expertise, and typical staffing patterns (e.g., ratio of management and key staff to general professional staff) used in the type of services described in this RFP.

F. Cost Detail Format and Requirements

The proposal shall include a detailed quotation of costs for all services that could be charged to the State Auditor. There is no set budget for this engagement. The cost must include the following level of detail.

1. The proposal shall include a quotation of charges for both fiscal years 2018-19 and 2019-20, and the State Auditor's option to extend for fiscal year 2020-21.
2. The cost component shall allow for 500 hours for follow-up work for each year.
3. The cost component shall include the total number of hours required to produce the deliverable, and contain a cost quotation of charges for each class of personnel.
4. The State Auditor will pay only for hours actually worked at the rates submitted and for actual expenses incurred. As a guide, use the Cost Proposal Worksheet (**Attachment C**). Include the following costs:
 - (a) Direct labor costs (personnel classification, number of hours, and hourly rates). This cost component must project the total number of hours required to produce the deliverables and contain a cost quotation of charges for each class of personnel that would be used to produce the deliverables.
 - (b) Expert testimony cost. It may be required after the report is issued.
 - (c) Travel to state entities' offices at various locations in the State is required for this engagement. The rates for travel-related expenses shall not exceed the rates established for excluded employees of the State of California.

G. Submission of Proposals

1. Proposals to this request constitute an express acceptance of all provisions of this RFP, including all attachments, exhibits, and schedules. If a proposer indicates an unwillingness to accept any provision, the State Auditor may reject its proposal. However, the State Auditor, at her sole discretion, may negotiate with the proposer on specific provisions of the final agreement.
2. Proposers should provide straightforward and concise descriptions of their ability to satisfy the requirements of this RFP. The proposal must be complete and accurate.
3. Costs incurred for developing proposals, in anticipation of award of the agreement, are entirely the responsibility of the proposer, and shall not be charged to the State.
4. Proposers shall submit six (6) legible proposals. One original proposal must be marked "ORIGINAL COPY," and must have original signatures. Five (5) additional proposals may contain photocopies of the original proposal.
5. The original and five copies of the proposal shall be double-sided to conserve paper and should be prepared in the least expensive method.
6. The font shall be in Arial or Times New Roman, black, and 12 point.

7. An individual who is authorized to bind the proposing firm contractually shall sign the Proposal/Proposer Certification Sheet (**Attachment B**). The signature must indicate the title or position that the individual holds in the firm.
8. Before submitting a response to this solicitation, proposers should review, correct all errors, and confirm compliance with the RFP requirements.
9. Time is of the essence. Proposals must be submitted and received by the due date and time shown in Section III, Paragraph A, Table 2 and shall be delivered via Federal Express or other similar delivery service, messenger or courier service. Late proposals will not be accepted without exceptional cause and the express written permission of the State Auditor. **Email proposals are not acceptable.**
10. Proposals shall be sent in a sealed envelope, clearly marked "Response to RFP No. 19-03," and addressed to the attention of Ms. Donnell Duclo, Business Services Analyst.

California State Auditor
621 Capitol Mall, Suite 1200
Sacramento, CA 95814

DO NOT OPEN

11. The State Auditor will not consider more than one proposal from an individual, firm, partnership, corporation or association under the same or different names.
12. If the proposal is made under a fictitious name or business title, the actual legal name of the proposer must be provided.
13. No oral understanding or agreement shall be binding on either party.
14. All proposals shall include the documents identified in Section V, Required Attachment Checklist (**Attachment A**).
15. Confidential Proposal Information. Any components of the proposal reflecting trade secrets or other confidential information shall be prominently marked "CONFIDENTIAL" and shall identify the reasonable legal basis for confidentiality. The State will deem those of the proposal portions not marked "CONFIDENTIAL" releasable under the California Public Records Act.
16. Modification or Withdrawal of Proposals. Any proposal that the State Auditor receives before the deadline to submit proposals may be withdrawn or modified by written request of the Contractor. However, to be considered, the modified proposal must be received by the deadline.
17. Modification or Amendment of This Request. This RFP may be modified at any time prior to the time set for receipt of proposals and thereafter as long as no proposal has been opened. Upon any such modification, all proposers will be notified, and any person or firm who has expressly requested such notice in writing will be notified. However, persons or firms who have been invited to propose, but who have not indicated their interest in writing, may not be notified of such changes at the discretion of the State Auditor.

18. Proposals must be complete in all respects and submitted by the due date and time shown in Section III, Paragraph A, Table 2.

H. Rejection of Proposals

Submitted proposals may be rejected for any of the following reasons:

1. Right to Reject Any or All Proposals. The policy of the State Auditor is to solicit proposals with a bona fide intention to award a contract. The State Auditor, in her sole discretion, may reject proposals submitted in response to this RFP, without regard to the cost or quality of any proposal, or other considerations, upon determination that it is in the best interest of the State Auditor to do so.
2. The State cannot negotiate terms and conditions mandated by law.
3. The State Auditor, in her sole discretion, reserves the right to reject any individual proposed to be assigned to the engagement.
4. Proposals not including the required attachments shall be deemed non-responsive and will be rejected.
5. Omissions, inaccuracies or misstatements will be sufficient cause for rejection of a proposal.
6. A proposal may be rejected if it is conditional, incomplete, or it contains any alterations of form or other irregularities.
7. Proposals that contain false or misleading statements or that provide references that do not support an attribute or condition claimed by the proposer may be rejected.
8. Proposals that score between 0-64 points will not be considered.

I. Notice of Payment Terms

The invoicing and payment terms are in Section VI, Sample Standard Agreement, Exhibit B - Sample Budget Detail and Payment Provisions.

J. Evaluation Process

1. The State Auditor will evaluate proposals and award, if made, will be to the responsible proposer earning the highest score.
2. At the time of proposal opening, each proposal will be checked for the presence or absence of required information in conformance with Section III, Paragraph G. Submission of Proposals.
3. Proposals that meet the minimum qualifications will be evaluated and scored according to the Scoring Criteria in Table 3. A responsive proposal is one that meets or exceeds the requirements stated in this RFP.

4. The proposal with the lowest cost for fiscal years 2018-19 and 2019-20 will receive the maximum cost points. The remaining proposals will be awarded cost points based on the following calculations:

Lowest Proposer's Cost = (factor) X maximum cost points = cost points for other proposer(s)

EXAMPLE of other proposer's cost based on 30 cost points available

Lowest Cost Proposal = \$75,000, next Lowest Proposal = \$100,000

\$75,000 divided by \$100,000 = .75 x 30 = 22.5 cost points awarded to other proposal

Table 3. Scoring Criteria

Scoring Criteria	Maximum Possible Points
Cost	30
Technical Aspects of Proposal	
Quality of approach and methodology	15
Clarity and succinctness of proposal	10
Organizational Capabilities	
Demonstrated ability to successfully perform an information systems general and business process application controls review of FI\$Cal.	15
Qualifications and experience of management and lead staff to be assigned to the project	15
Interview	15
TOTAL	100

5. Proposals that score 65 points or more will be scheduled for an interview.
6. If no proposals are received containing bids offering a price which, in the opinion of the State Auditor, is a reasonable price, the State Auditor is not required to award an agreement.
7. In the event of a tie bid, the affected bidders are invited to witness the tiebreaker coin toss at the State Auditor's Office.

8. During the evaluation and selection process, the State Auditor may request the presence of a proposer's representative for answering specific questions, orally and/or in writing. If discrepancies between sections or other errors are found in a final proposal, the State Auditor may reject the proposal; however, the State Auditor may in her sole discretion, retain the proposal and correct any arithmetic or transposition errors in price or quantity. The State Auditor will notify all proposers of her decision to award the contract.

K. Award and Protest

1. Notice of the proposed award shall be posted in a public place at the [California State Auditor's Office](#) and on its website for five (5) working days prior to awarding the agreement.
2. If any proposer, prior to the award of agreement, files a protest with the State Auditor on the grounds that the (protesting) proposer would have been awarded the contract had the State Auditor correctly applied the evaluation standard in the RFP, or if the State Auditor followed the evaluation and scoring methods in the RFP, the agreement shall not be awarded until either the protest has been withdrawn or the State Auditor has decided the matter. It is suggested that you submit any protest by certified or registered mail.
3. Within five (5) days after filing the initial protest, the protesting proposer shall file a detailed statement specifying the grounds for the protest.

L. Disposition of Proposals

1. All proposals will become property of the State of California and will, along with the summaries of evaluations, be regarded as public records under the California Public Records Act and be available to the public for inspection at the conclusion of the committee scoring process. Proprietary information, as reasonably identified by the proposer, in the proposals will remain confidential as permitted by law. To prevent its release to the public, the proposer must indicate what information in the proposal is proprietary, along with a citation to the relevant provisions of law exempting or precluding that information from public disclosure.
2. Proposals may be returned at the proposer's expense, unless such expense is waived by the State Auditor.

M. Live-Scan/Fingerprinting

1. The State Auditor requires live-scanning background checks for employees, Contractor personnel, and subcontractor personnel. The State is responsible for obtaining and paying for background checks for each assigned employee of the Contractor or subcontractor.
2. The Contractor is responsible for obtaining and paying for fingerprint fees for each assigned employee of the Contractor or subcontractor. The Contractor shall work with the State in establishing the process for conducting the live-scanning background checks.

N. Agreement Execution and Performance

Section VI, includes a sample Standard Agreement along with all possible exhibits and attachments that may apply. Proposers should review the Standard Agreement in its entirety.

1. Service shall start not later than 5 days, or on the express date set by the State Auditor and the Contractor, after all approvals have been obtained and the agreement is fully executed. Should the Contractor fail to commence work at the agreed-upon time, the State Auditor, upon five (5) days' written notice to the Contractor, reserves the right to terminate the agreement. In addition, the Contractor shall be liable to the State for the difference between Contractor's proposal price and the actual cost of performing work by another Contractor.
2. All performance under the agreement shall be completed on or before the termination date of the agreement.
3. Contract Subject to Appropriation. Payment under the contract will be subject to appropriation of sufficient funds by the Legislature to the State Auditor to cover the costs of the services described in this RFP.

IV. PREFERENCE PROGRAMS

A. Small Business Preference Program

1. The proposal should include a statement indicating whether or not the firm claims a small business preference and proposers should certify their small business certification using the Bidder Declaration (**Attachment D**).
2. This RFP does not include a minimum Small Business (SB) participation preference. Bidders claiming the 5 percent preference must be certified by California as a small business or must commit to subcontract at least 25 percent of the net bid price with one or more California Certified Small Businesses (CCSB). Each listed certified small business must perform a “commercially useful function” in the performance of the contract as defined by Government Code section 14837(d)(4).
3. To claim the CCSB preference, which may not exceed 5 percent for any bid, the firm must have its principal place of business located in California, have a complete application (including proof of annual receipts) on file with the California Office of Small Business and DVBE Services by 4:00 p.m. on the bid due date and time listed in Section III, Paragraph A, Table 2 and be verified by such office.
4. If the proposer receives the CCSB preference, the score assigned to its proposal will be increased by an amount equal to 5 percent of the points assigned to the highest scored proposal.

B. Disabled Veteran Business Enterprise (DVBE) – Declaration and Program Incentive

1. The DVBE Incentive Program applies to this solicitation. It is separate from the DVBE Participation Program. This solicitation DOES NOT include a minimum DVBE participation requirement. **DVBE participation is not required in the bid or proposal.**
2. The incentive is used only for evaluation purposes to arrive at the successful bidder and does not alter the amounts of the actual bid. Any responsive and responsible bidder with the confirmed DVBE Participation per Table 4 is eligible to receive the incentive, which will be between 1 percent and 5 percent of the total possible available points, not including points for socioeconomic incentives or preferences. Bidders who are not responsive or responsible, regardless of the amount of DVBE participation, are not eligible to receive the incentive.
3. The State Auditor will apply the incentive to bids proposing the utilization of DGS Certified DVBE firms identified in the Bidder Declaration (**Attachment D**). Information provided on the Bidder Declaration shall be verified by the State Auditor prior to award of the contract. The incentive points are included in the sum of non-cost points based on the amount of the DVBE participation in the bid being evaluated in Table 4. When applying the DVBE Incentive, a Non-Small Business shall not displace an award to a DGS Certified Small Business.

Table 4. DVBE Participation (High Score Awards)

Verified DVBE Participation	DVBE Incentive Amount
5% or More	5%
4% - 4.99 %	4%
3% - 3.99%	3%
2% - 2.99%	2%
1% - 1.99%	1%

C. Target Area Contract Preference Act

Proposers requesting the Target Area Contract Area Preference shall submit a completed preference request form (**Attachment G**) and shall comply with all of the following:

1. Contractor agrees to comply with the requirements of the Target Area Contract Preference Act (Government Code section 4530, et seq.) and attendant rules and regulations (California Admin. Code, Title 2, section 1896.30, et seq.).
2. Contractor agrees that the State Auditor will have the right to inspect its facilities and operations and to inspect, review, obtain, and copy all records pertaining to performance of the contract or compliance with the requirements of the Act and attendant rules and regulations. Contractor further agrees that such records shall be maintained for a period of three (3) years after the final payment under the contract.
3. Contractor agrees with respect to a certification to hire persons with high risk of unemployment, to:
 - (a) Act in good faith for the purpose of maintaining such persons as employees for the duration of the contract performance; and
 - (b) To make a reasonable effort to replace such persons, who for any reason permanently cease to be on the payroll, with other persons with high risk of unemployment; and
 - (c) To promptly report to the State Auditor and thereafter confirm in writing within seven (7) days the names of such persons who have been terminated or absent from work for more than three (3) consecutive work days and to communicate the reasons for the termination or absence. Contractor agrees under such circumstances to consult with the State Auditor and the Employment Development Department with respect to replacement of such persons.

V. REQUIRED ATTACHMENTS

Attachment A: Required Attachment Checklist
Attachment B: Proposal/Proposer Certification Sheet
Attachment C: Cost Proposal Worksheet (sample)
Attachment D: Bidder Declaration
Attachment E: Independence Questionnaire/Conflict of Interest Disclosure
Attachment F: Darfur Contracting Act Certification
Attachment G: Target Area Contract Preference Act
Attachment H: California Civil Rights Law Certification

VI. SAMPLE STANDARD AGREEMENT (STD.213)

- Exhibit A - Sample Scope of Work and Description of Services
- Exhibit B - Sample Budget Detail and Payment Provisions
- Exhibit C - Information Technology Terms and Conditions
- Exhibit D - Special Terms and Conditions
- Exhibit E - Encryption and Information Privacy Policy
- Exhibit F - Independence Questionnaire/Conflict of Interest Disclosure
- Exhibit G - Confidentiality/Nondisclosure Statement
- Exhibit H - Contractor Certification Clauses
- Exhibit I - Payee Data Record (Std. 204)

ATTACHMENT A - REQUIRED ATTACHMENT CHECKLIST

A responsive proposal shall include the requirements identified in Section III of this RFP, all required attachments, and be submitted by the proposal due date. A complete proposal package will consist of the items identified below. Place a check mark or "X" in the Check column to confirm the items are in your proposal.

Table 5. Required Attachment Checklist

Check	Description	Attachment
_____	One original proposal with original signatures	
_____	Five photocopies of the original proposal, printed double-sided	
_____	Required Attachment Checklist	Attachment A
_____	Proposal/Proposer Certification Sheet	Attachment B
_____	Cost Proposal Worksheets for each fiscal year ending (June 30, 2019 and June 30, 2020, and the State Auditor's option to extend to June 30, 2021).	Attachment C
_____	Bidder Declaration	Attachment D
_____	Independence Questionnaire/Conflict of Interest Disclosure	Attachment E
_____	Darfur Contracting Act Certification	Attachment F
_____	Target Area Contract Preference Act	Attachment G
_____	California Civil Rights Laws Certification	Attachment H

ATTACHMENT B - PROPOSAL/PROPOSER CERTIFICATION SHEET

This Proposal/Proposer Certification Sheet must be signed and returned along with all the required attachments as an entire package in duplicate with **original signatures**. The proposal must be transmitted in a sealed envelope in accordance with RFP instructions. **An unsigned proposal/proposer certification sheet may be cause for rejection.**

- A. Place all required attachments behind this certification sheet.
- B. I have read and understand the DVBE Participation requirements and have included documentation demonstrating that I have met the participation goals or have made a good faith effort. **DVBE participation is not required in this proposal.**
- C. The signature affixed hereon and dated certifies compliance with all the requirements of this proposal document. The signature below authorizes the verification of this certification.

1. Company Name: _____

2. Address: _____

3. Telephone Number: _____

Organization type:

4. ☐ Sole Proprietorship 5. ☐ Partnership 6. ☐ Corporation/LLC

7. Federal Employee ID No: _____

8. California Corporation/LLC No.: _____

9. License and/or certification information: _____

10. Proposer's Name (Print): _____

11. Title (Print): _____

12. **Signature:** _____ **13. Date:** _____

14. Are you certified with the Department of General Services, Office of Small Business Certification and Resources (OSBCR) as a Small Business Enterprise or Disabled Veteran Business Enterprise?

Small Business Enterprise: Yes ☐ Certification number: _____ No ☐

Disabled Veteran Business Enterprise: Yes ☐ Certification number: _____ No ☐

If Yes is checked, include a copy of your certification. If your application is pending with OSBCR, include the date the application was submitted. _____

ATTACHMENT B - INSTRUCTIONS FOR PROPOSAL/PROPOSER CERTIFICATION SHEET

Complete the numbered items on the Proposal/Proposer Certification Sheet by following the instructions below.

Item Numbers	Instructions
1, 2, 3	Must be completed. These items are self-explanatory.
4	Check if your firm is a sole proprietorship. A sole proprietorship is a form of business in which one person owns all the assets of the business in contrast to a partnership and corporation. The sole proprietor is solely liable for all the debts of the business.
5	Check if your firm is a partnership. A partnership is a voluntary agreement between two or more competent persons to place their money, effects, labor, and skill, or some or all of them in lawful commerce or business, with the understanding that there shall be a proportional sharing of the profits and losses between them. An association of two or more persons to carry on, as co-owners, a business for profit.
6	Check if your firm is a corporation. A corporation is an artificial person or legal entity created by or under the authority of the laws of a state or nation, composed, in some rare instances, of a single person and his successors, being the incumbents of a particular office, but ordinarily consisting of an association of numerous individuals.
7	Enter your federal employee tax identification number.
8	Enter your corporation number assigned by the California Secretary of State's Office. This information is used for checking if a corporation is in good standing and qualified to conduct business in California.
9	Complete, if applicable, by indicating the type of license and/or certification that your firm possesses and that is required for the type of services being procured.
10, 11, 12, 13	Must be completed. These items are self-explanatory.
14	If certified as a California Small Business, place a check in the "yes" box, and enter your certification number on the line. If certified as a Disabled Veterans Business Enterprise, place a check in the "Yes" box and enter your service code on the line. If you are not certified to one or both, place a check in the "No" box. If your certification is pending, enter the date your application was submitted to the California Office of Small Business and DVBE Services.

ATTACHMENT C - COST PROPOSAL WORKSHEET

Proposers may format the Cost Proposal Worksheet to suit their needs. The cost proposal shall include a detailed quotation of costs for all services that could be charged to the State Auditor. The cost must include the following level of detail.

1. A separate quotation of charges for fiscal years 2018-19 and 2019-20, and the State Auditor's option to extend for fiscal year 2020-21.
2. The cost component shall allow for 500 hours for follow-up work for each year.
3. Include the total number of hours required to produce the deliverable, and contain a cost quotation of charges for each class of personnel. The State Auditor will pay only for hours actually worked at the rates submitted and for actual expenses incurred. Include the following costs:
 - (a) Direct labor costs (personnel classification, number of hours, and hourly rate(s). This cost component must project the total number of hours required to produce the deliverables and contain a cost quotation of charges for each class of personnel that would be used to produce the deliverables.
 - (b) Expert testimony cost. It may be required after the report is issued.
 - (c) Travel to state entities' offices at various locations in the State is required for this engagement. The rates for travel-related expenses shall not exceed the rates established for excluded employees of the State of California.

Direct Labor	Hours	Rate	Total
Job title/description			\$
Job title/description			\$
Job title/description			\$
Total			\$
Subcontractor(s) Cost Itemized			\$
TOTAL COSTS			\$

ATTACHMENT D - BIDDER DECLARATION

State of California—Department of General Services, Procurement Division

GSPD-05-105 (REV 08/09)

Solicitation Number

BIDDER DECLARATION

1. Prime bidder information (Review attached Bidder Declaration Instructions prior to completion of this form):
- a. Identify current California certification(s) (MB, SB, NVSA, DVBE): or None (If "None," go to Item #2)
- b. Will subcontractors be used for this contract? Yes No (If yes, indicate the distinct element of work your firm will perform in this contract e.g., list the proposed products produced by your firm, state if your firm owns the transportation vehicles that will deliver the products to the State, identify which solicited services your firm will perform, etc.). Use additional sheets, as necessary.
- c. If you are a California certified DVBE: (1) Are you a broker or agent? Yes No (2) If the contract includes equipment rental, does your company own at least 51% of the equipment provided in this contract (quantity and value)? Yes No N/A

2. If no subcontractors will be used, skip to certification below. Otherwise, list all subcontractors for this contract. (Attach additional pages if necessary):

Subcontractor Name, Contact Person, Phone Number & Fax Number	Subcontractor Address & Email Address	CA Certification (MB, SB, NVSA, DVBE or None)	Work performed or goods provided for this contract	Corresponding % of bid price	Good Standing?	51% Rental?

CERTIFICATION: By signing the bid response, I certify under penalty of perjury that the information provided is true and correct.

Page of

BIDDER DECLARATION Instructions

All prime bidders (the firm submitting the bid) must complete the Bidder Declaration.

- 1.a. Identify all current certifications issued by the State of California. If the prime bidder has no California certification(s), check the line labeled "None" and proceed to Item #2. If the prime bidder possesses one or more of the following certifications, enter the applicable certification(s) on the line:
- Microbusiness (MB)
 - Small Business (SB)
 - Nonprofit Veteran Service Agency (NVSA)
 - Disabled Veteran Business Enterprise (DVBE)

- 1.b. Mark either "Yes" or "No" to identify whether subcontractors will be used for the contract. If the response is "No," proceed to Item #1.c. If "Yes," enter on the line the distinct element of work contained in the contract to be performed or the goods to be provided by the prime bidder. Do not include goods or services to be provided by subcontractors.

Bidders certified as MB, SB, NVSA, and/or DVBE must provide a commercially useful function as defined in Military and Veterans Code Section 999 for DVBEs and Government Code Section 14837(d)(4)(A) for small/microbusinesses.

Bids must propose that certified bidders provide a commercially useful function for the resulting contract or the bid will be deemed non-responsive and rejected by the State. For questions regarding the solicitation, contact the procurement official identified in the solicitation.

Note: A subcontractor is any person, firm, corporation, or organization contracting to perform part of the prime's contract.

- 1.c. This item is only to be completed by businesses certified by California as a DVBE.

(1) Declare whether the prime bidder is a broker or agent by marking either "Yes" or "No." The Military and Veterans Code Section 999.2 (b) defines "broker" or "agent" as a certified DVBE contractor or subcontractor that does not have title, possession, control, and risk of loss of materials, supplies, services, or equipment provided to an awarding department, unless one or more of the disabled veteran owners has at least 51-percent ownership of the quantity and value of the materials, supplies, services, and of each piece of equipment provided under the contract.

(2) If bidding rental equipment, mark either "Yes" or "No" to identify if the prime bidder owns at least 51% of the equipment provided (quantity and value). If not bidding rental equipment, mark "N/A" for "not applicable."

2. If no subcontractors are proposed, do not complete the table. Read the certification at the bottom of the form and complete "Page ____ of ____" on the form.

If subcontractors will be used, complete the table listing all subcontractors. If necessary, attach additional pages and complete the "Page ____ of ____" accordingly.

2. (continued) Column Labels

Subcontractor Name, Contact Person, Phone Number & Fax Number—List each element for all subcontractors.

Subcontractor Address & Email Address—Enter the address and if available, an Email address.

CA Certification (MB, SB, NVSA, DVBE or None)—If the subcontractor possesses a current State of California certification(s), verify on this website (www.eprocure.pd.dgs.ca.gov).

Work performed or goods provided for this contract—Identify the distinct element of work contained in the contract to be performed or the goods to be provided by each subcontractor. Certified subcontractors must provide a commercially useful function for the contract. (See paragraph 1.b above for code citations regarding the definition of commercially useful function.) If a certified subcontractor is further subcontracting a greater portion of the work or goods provided for the resulting contract than would be expected by normal industry practices, attach a separate sheet of paper explaining the situation.

Corresponding % of bid price—Enter the corresponding percentage of the total bid price for the goods and/or services to be provided by each subcontractor. Do not enter a dollar amount.

Good Standing?—Provide a response for each subcontractor listed. Enter either "Yes" or "No" to indicate that the prime bidder has verified that the subcontractor(s) is in good standing for all of the following:

- Possesses valid license(s) for any license(s) or permits required by the solicitation or by law
- If a corporation, the company is qualified to do business in California and designated by the State of California Secretary of State to be in good standing
- Possesses valid State of California certification(s) if claiming MB, SB, NVSA, and/or DVBE status

51% Rental?—This pertains to the applicability of rental equipment. Based on the following parameters, enter either "N/A" (not applicable), "Yes" or "No" for each subcontractor listed.

Enter "N/A" if the:

- Subcontractor is NOT a DVBE (regardless of whether or not rental equipment is provided by the subcontractor) or
- Subcontractor is NOT providing rental equipment (regardless of whether or not subcontractor is a DVBE)

Enter "Yes" if the subcontractor is a California certified DVBE providing rental equipment and the subcontractor owns at least 51% of the rental equipment (quantity and value) it will be providing for the contract.

Enter "No" if the subcontractor is a California certified DVBE providing rental equipment but the subcontractor does NOT own at least 51% of the rental equipment (quantity and value) it will be providing.

Read the certification at the bottom of the page and complete the "Page ____ of ____" accordingly.

ATTACHMENT E - INDEPENDENCE QUESTIONNAIRE/CONFLICT OF INTEREST DISCLOSURE

Independence Questionnaire for _____
(Type or write consultant's name.)

Government Auditing Standards (GAO 18-568G) require that auditors be independent. The Contractor and all personnel must be independent. Independence comprises independence of mind and appearance. To ensure that the independence standard is met, each Contractor must disclose any threats to independence related to the entities or programs being audited, which are listed below.

Project Leadership

1. Department of FI\$Cal

Partner Agencies

1. Department of Finance
2. Department of General Services
3. State Controller's Office
4. State Treasurer's Office

State Departments

1. California Air Resources Board
2. California Community Colleges Board of Governors
3. California Department of Developmental Services
4. California Department of Education
5. California Department of Insurance
6. California Department of Resources Recycling and Recovery
7. California Department of Social Services
8. California Department of Tax and Fee Administration
9. California High-Speed Rail Authority
10. California Highway Patrol
11. California Student Aid Commission
12. Department of Health Care Services
13. Employment Development Department
14. Franchise Tax Board

1. Do you have any of the following threats to independence? If you respond yes to any item, please describe the threat on the next page or attach a separate sheet.
 - (a) Self-interest threat—the threat that a financial or other interest will inappropriately influence an auditor's judgement or behavior. For example, seeking employment with an entity; biases about policies or preconceived notions about the programs; or financial interest that is direct, or is significant/material, though indirect, in the audited entity.

- (b) Self-review threat—the threat that an auditor or audit organization that has provided nonaudit services will not appropriately evaluate the results of previous judgements made or services performed as part of the nonaudit services when forming a judgement significant to an audit.
- (c) Bias threat—the threat that an auditor will, as a result of political, ideological, social, or other convictions, take a position that is not objective. For example, a decision-making role that could affect the entity's operations, or biases about policies or preconceived notions about the programs.
- (d) Familiarity threat—the threat that aspects of a relationship with management or personnel of an audited entity, such as a close or long relationship, or that of an immediate or close family member, will lead an auditor to take a position that is not objective. For example, a family member who is a director, officer, or employee, and is in a position to exert direct and significant control over the audited entity or program.
- (e) Undue influence threat—the threat that external influences or pressures will impact an auditor's ability to make independent and objective judgements. Undue influence threats are external pressures, actual or perceived, from management or employees of the audited entity that would deter the auditor from acting objectively and exercising professional skepticism.
- (f) Management participation threat—the threat that results from an auditor taking on the role of management or otherwise performing management functions on behalf of the entity undergoing an audit.

Respond to question 1. here.

2. Do you have any threats to independence as described above that would restrict your work or interfere with your ability to form independent and objective conclusions? If you respond yes, describe the threat(s).

3. In the last five years, has your firm or any staff whom you plan to assign to this audit been a party to any contract with any of the entities listed? If you respond yes, provide a copy of the statement of work.

4. Are you currently seeking employment, pursuing, or do you plan to pursue a contract with any of the entities listed during the term of the contract? If you respond yes, please explain.

5. For the threat(s) identified in questions 1 and 3 above, please describe the actions you would take to mitigate the threat.

Company/Firm Name

Print Name

Signature

Date

ATTACHMENT F - DARFUR CONTRACTING ACT CERTIFICATION

Pursuant to Public Contract Code section 10478, if a bidder or Contractor currently or within the previous three (3) years has had business activities or other operations outside of the United States, it must certify that it is not a “scrutinized” company as defined in Public Contract Code section 10476.

Therefore, to be eligible to submit a bid or proposal, write your company name and Federal ID Number and **complete only one** of the following three options (via initials for Option 1 or 2, or via initials and certification for Option 3).

Firm Name (Print)

Federal ID Number

Print Name and Title of Person Initialing (for options 1 or 2)

1. We do not currently have, and have not had within the previous three years, business activities or other operations outside of the United States.

Initials

OR

2. We are a scrutinized company as defined in Public Contract Code section 10476, but we have received written permission from the Department of General Services (DGS) to submit a bid or proposal pursuant to Public Contract Code section 10477(b). A copy of the written permission from DGS is included with our bid or proposal.

Initials

OR

3. We currently have, or we have had within the previous three years, business activities or other operations outside of the United States, but we certify below that we are not a scrutinized company as defined in Public Contract Code section 10476.

Initials +
Certification Below

Certification for Option 3.

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective proposer/bidder to the clause listed above in option 3. This certification is made under the laws of the State of California.

By (Authorized Signature)

Date Executed

Print Name and Title of Person Signing (for option 3)

Executed (County
and State)

ATTACHMENT G - TARGET AREA CONTRACT PREFERENCE ACT

STD. 830 (REV. 1/2005) (FRONT)

TARGET AREA CONTRACT PREFERENCE ACT PREFERENCE REQUEST FOR GOODS AND SERVICES SOLICITATIONS

Print

Clear

STATE OF CALIFORNIA – DEPARTMENT OF GENERAL SERVICES
DISPUTE RESOLUTION AND PREFERENCE PROGRAMS

Complete this form to request TACPA preferences for this bid.

SOLICITATION NUMBER	AGENCY/DEPT
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Target Area Contract Preference Act (TACPA) preferences are available only if the lowest responsible bid and resulting contract exceeds \$100,000. Your firm must be California based. You must certify, under penalty of perjury, to perform either 50% of the labor hours required to complete a contract for GOODS, or 90% of the labor hours required to complete a contract for SERVICES in the Target Area Contract Preference Act zone(s) you identify in Section I. The TACPA provides bid selection preferences of 5% for eligible worksites (Section I), and 1% to 4% for hiring eligible workforce employees (Section II). To identify Census Tract and Block Group numbers contact the city or county Planning and Development Commission for the intended worksite or visit the U.S. Census Bureau website (www.census.gov).

Section I. 5% WORKSITE(S) PREFERENCE ELIGIBILITY AND LABOR HOURS

To the Bidder: Preference may be denied for failure to provide the following required information:

- (1) Identify each firm in the supply chain, including yours, that will perform any of the contract labor hours required to complete this contract. Identify your role in the distribution process. Transportation hours performed by each carrier must be reported separately.
- (2) List complete addresses for each firm named below.
- (3) Report projected number of labor hours required to perform the contract for each firm.
- (4) Enter the CENSUS TRACT number.
- (5) Enter the BLOCK GROUP number.
- (6) Identify the California designated TACPA worksite(s) by entering the proper Criteria letter A, B, C, D, E, F (see reverse for instructions) in the Criteria column.

(1) FIRM NAME and CONTRACT FUNCTION: (Manufacturing, transportation, shipping, warehousing, admin., etc.) Use additional pages, as needed, to fully report worksite information.	(2) WORKSITE ADDRESS Street Address, City, County, State, Zip Code, Phone Number	(3) PROJECTED LABOR HOURS	COMPLETE FOR ALL SITES LOCATED WITHIN A TACPA PREFERENCE AREA(S)		
			(4) TRACT NUMBER	(5) BLOCK NUMBER	(6) CRITERIA (A – F)
TOTAL PROJECTED LABOR HOURS:		0.00			

Section II. 1% TO 4% WORKFORCE PREFERENCE

Bidders must qualify their firm's worksite eligibility to request an additional 1% to 4% workforce preference in Section II.

- ☐ I request a 1% preference for hiring eligible persons to perform 5 to 9.99% of the total contract labor hours.
☐ I request a 2% preference for hiring eligible persons to perform 10 to 14.99% of the total contract labor hours.
☐ I request a 3% preference for hiring eligible persons to perform 15 to 19.99% of the total contract labor hours.
☐ I request a 4% preference for hiring eligible persons to perform 20% or more of the total contract labor hours.

Section III. CERTIFICATION FOR WORKSITE AND WORKFORCE PREFERENCES

To receive TACPA preferences, the following certification must be completed and signed by the Bidder.

I hereby certify under penalty of perjury that the bidder (1) is a California based company as defined in the TACPA regulations; (2) shall ensure that at least 50% of the labor hours required to complete a contract for Goods, or 90% of the labor hours to complete a Services contract shall be performed at the designated TACPA worksite(s) claimed in Section I; (3) shall hire persons who are TACPA eligible employees to perform the specified percent of total contract labor hours as claimed in Section II; (4) has provided accurate information on this request. I understand that any person furnishing false certification, willfully providing false information or omitting information, or failing to comply with the TACPA requirements is subject to sanctions as set forth in the statutes.

BIDDER'S NAME & TITLE	BIDDER'S SIGNATURE	PHONE NUMBER	DATE
		FAX NUMBER	

STD. 830 (REV. 1/2005) (REVERSE)

**TARGET AREA CONTRACT PREFERENCE ACT
PREFERENCE REQUEST FOR GOODS AND SERVICES SOLICITATIONS**

Target Area Contract Preference Act References and Instructions

The Target Area Contract preference Act (TACPA), GC §4530 et seq., and 2 CCR §1896.30 et seq., promotes employment and economic development at designated distressed areas by offering 5% worksite and 1% to 4% workforce bidding preferences in specified state contracts. The TACPA preferences do not apply to contracts where the worksite is fixed by the contract terms. These preferences only apply to bidders who are California based firms, and only when the lowest responsible bid and resulting contract exceed \$100,000. Bidders must certify, under penalty of perjury to perform either 50% (for GOODS contracts) or 90% (for SERVICES contracts) of the labor hours required to complete this contract in the eligible TACPA area worksite(s) identified in Section I on the reverse side of this page. TACPA preferences are limited to 9%, or a maximum of \$50,000 per bid. In combination with any other preferences, the maximum limit is 15% of the lowest responsible bid; and, in no case more than \$100,000 per bid.

**Section I
Worksite Preference Eligibility and Labor Hours**

Bidders must identify at least one eligible TACPA worksite by entering the criteria letter A, B, C, D, E or F in the "Criteria" column and enter the "Census Tract" and "Block Group" Numbers to be eligible for the preference. You must name each and every firm or site where contract labor hours will be worked. Preference requests may be denied if an eligible California TACPA worksite is not identified, or all firms performing contract labor hours are not identified. Enter one of the following "Criteria" letters to identify each TACPA worksite on the reverse page:

- A. The firm is located in a California eligible distressed area(s).
- B. The firm will establish a worksite(s) in a California eligible distressed area(s).
- C. The firm is in a census tract with a contiguous boundary adjacent to a California eligible distressed area.
- D. The firm will establish a worksite(s) located directly adjoining a valid TACPA census tract/block group that when attached to the California eligible distressed area(s) forms a contiguous boundary.
- E. The bidder will purchase the contract goods from a manufacturer(s) in a California eligible distressed area(s). **This option applies to solicitations for GOODS only.**
- F. The bidder will purchase contract goods from a manufacturer(s) in directly adjoining census tract blocks that when attached to the California eligible distressed area(s) forms a contiguous boundary. **This option applies to solicitations for GOODS only.**

Enter labor hours for each listed firm and site. The hours shall be reasonable and shall only include the labor hours necessary and required to complete the contract activities. Artificially increasing hours at a claimed TACPA worksite, or understating labor hours worked outside the eligible worksite may result in a denied preference request. Do not include machine time and non-labor time when projecting contract labor hours. Report all bidder work hours and those of any subcontractor performing this contract. All transportation hours must be reported for each carrier separately and must not be combined or included with hours for manufacturing, processing, or administration, or at any eligible TACPA site. Failure to list all the labor hours to be performed at the reportable sites will result in a denial of this preference request.

The bidder must explain, by activity, their firm's projected contract labor hours by completing and signing the *Bidder's Summary* form (included with this solicitation).

STATE OF CALIFORNIA – DEPARTMENT OF GENERAL SERVICES
DISPUTE RESOLUTION AND PREFERENCE PROGRAMS

If supplying goods, the bidder must also provide a completed and signed *Manufacturer's Summary* form (included with this solicitation) that specifies the number of projected labor hours necessary to make the product(s).

**Section II
Workforce Preference**

Eligibility to request a workforce preference is based on the bidder first claiming and receiving approval of the 5% TACPA worksite preference. The workforce preferences are only awarded if the bidder hires and employs the TACPA qualified individuals. Workforce preferences will not be approved for another firm's employees. By claiming a workforce preference percentage, the bidder must have its eligible employees perform the specified percentage of the total contract workforce labor hours. See Section I, "Total Projected Labor Hours," STD. 830. To claim the workforce preferences select or check the appropriate box for percent of requested bid preferences in Section II.

**Section III
Certification for Worksite and Workforce Preferences**

Bidder must sign, under penalty of perjury, the certification contained in Section III to be eligible for any of the preferences requested pursuant to this form. The penalties associated with the TACPA statute are: GC §4535.1, a business which requests and is given the preference by reason of having furnished a false certification, and which by reason of that certification has been awarded a contract to which it would not otherwise have been entitled, shall be subject to all of the following:

- (a) Pay to the State any difference between the contract amount and what the State's cost would have been if the contract had been properly awarded.
- (b) In addition to the amount specified in subdivision (a), be assessed a penalty in an amount of not more than 10 percent of the amount of the contract involved.
- (c) Be ineligible to directly or indirectly transact any business with the State for a period of not less than six months and not more than 36 months.

Prior to the imposition of any sanction under this chapter, the contractor or vendor shall be entitled to a public hearing and to five days notice of the time and place thereof. The notice shall state the reasons for the hearing.

If you receive an award based on these preferences you will be required to report monthly on your contract performance, labor hours, and TACPA compliance.

For questions concerning preferences and calculations, or if a bid solicitation does not include preference request forms, please call the awarding Department's contract administrator. Only another California certified small business can use TACPA, EZA or LAMBRA preferences to displace a California certified small business bidder.

To identify TACPA distressed worksites contact the local city or county Planning/Economic Development offices of the proposed worksite, or go to <http://factfinder.census.gov> and click on "Enter a street address" to find a Census Tract and Block Group. Verify the Census Tract and Block numbers for TACPA sites by calling the DGS, Procurement Division preference line at (916) 375-4609.

EXHIBIT H - CALIFORNIA CIVIL RIGHTS LAWS CERTIFICATION

Pursuant to Public Contract Code section 2010, if a bidder or proposer executes or renews a contract over \$100,000 on or after January 1, 2017, the bidder or proposer hereby certifies compliance with the following:

1. CALIFORNIA CIVIL RIGHTS LAWS: For contracts over \$100,000 executed or renewed after January 1, 2017, the Contractor certifies compliance with the Unruh Civil Rights Act (Civil Code section 51) and the Fair Employment and Housing Act (Government Code section 12960); and
2. EMPLOYER DISCRIMINATORY POLICIES: For contracts over \$100,000 executed or renewed after January 1, 2017, if a Contractor has an internal policy against a sovereign nation or peoples recognized by the United States government, the Contractor certifies that such policies are not used in violation of the Unruh Civil Rights Act (Civil Code section 51) or the Fair Employment and Housing Act (Government Code section 12960).

CERTIFICATION

I, the official named below, certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.		Federal ID Number
Proposer Firm Name (Print)		
By (Authorized Signature)		
Print Name and Title of Person Signing		
Date Executed	Executed in the County and State of	

VI. SAMPLE - STANDARD AGREEMENT (STD. 213)

Example Only. Do not complete or return the sample Standard Agreement.

STATE OF CALIFORNIA
STANDARD AGREEMENT
STD 213 (Rev 05/15)

AGREEMENT NUMBER
CSA-C-XXX-XXXX

1. This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME

CALIFORNIA STATE AUDITOR

CONTRACTOR'S NAME

[CONTRACTOR'S NAME]

2. The term of this Agreement is:

[DATE] through **[DATE]**

3. The maximum amount of this Agreement is:

[DOLLAR AMOUNT] AND NO CENTS (\$XXX.00)

4. The parties agree to comply with the terms and conditions of this Agreement, including the following exhibits and attachments marked with an ☒, which are, by this reference, fully incorporated and made a part of the Agreement.

<input checked="" type="checkbox"/> Exhibit A – Scope of Work and Description of Services	x pages
<input checked="" type="checkbox"/> Exhibit B – Budget Detail and Payment Provisions	x pages
<input checked="" type="checkbox"/> Exhibit C – General Terms and Conditions	x pages
<input checked="" type="checkbox"/> Exhibit D – Special Terms and Conditions	x pages
<input checked="" type="checkbox"/> Attachment 1 – Encryption and Information Privacy Policy	x pages
<input checked="" type="checkbox"/> Attachment 2 – Confidentiality/Nondisclosure Statement	x pages
<input checked="" type="checkbox"/> Attachment 3 – Independence Questionnaire/Conflict of Interest Disclosure	x pages
<input checked="" type="checkbox"/> Attachment 4 – Darfur Contracting Act Certification	x page
<input checked="" type="checkbox"/> Attachment 5 – California Civil Rights Law Certification	x page
<input checked="" type="checkbox"/> Attachment 6 – Contractor's Résumé	x page

IN WITNESS WHEREOF, the parties have executed this Agreement hereto.

CONTRACTOR	
CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.) CONTRACTOR	
BY (Authorized signature)	DATE SIGNED (Do not type.)
PRINTED NAME AND TITLE OF PERSON SIGNING [CONTRACTOR AND TITLE]	
ADDRESS ADDRESS	
STATE OF CALIFORNIA	
AGENCY NAME CALIFORNIA STATE AUDITOR	
BY (Authorized signature)	DATE SIGNED (Do not type.)
PRINTED NAME AND TITLE OF PERSON SIGNING ELAINE M. HOWLE, STATE AUDITOR	
ADDRESS 621 Capitol Mall, Suite 1200, Sacramento, CA 95814	

EXHIBIT A – SAMPLE SCOPE OF WORK AND DESCRIPTION OF SERVICES

1. PURPOSE OF AGREEMENT

The State and the Contractor enter into this Agreement for the purpose of [Contractor's Name] to provide [consulting] services to the California State Auditor (State).

2. CONTRACTOR AGREES TO PROVIDE SERVICES

[Insert a description of the scope of work.]

3. PROJECT DELIVERABLES AND COORDINATION REQUIREMENTS

[Insert project deliverables, timetable, etc.]

4. PROJECT REPRESENTATIVES

California State Auditor	Contractor
Business Services Coordinator: Ana Clark, Manager Fiscal and Business Services	Company:
Project Coordinator:	Name, Title:
Address: 621 Capitol Mall, Suite 1200 Sacramento, CA 95814	Address:
Phone: (916) 445-0255	Phone:
Fax: (916) 327-0019	Fax:
Email:	Email:

EXHIBIT B – SAMPLE BUDGET DETAIL AND PAYMENT PROVISIONS

1. AMOUNT PAYABLE

The total amount payable under this Agreement may not exceed _____ dollars (\$_____) and is payable as follows:

- (a) In exchange for providing the promised services and other deliverables specified in **Exhibit A** of this Agreement, the State shall pay the Contractor at a rate of _____ dollars (\$XX) per hour.
- (b) The Contractor, in consultation with the State Auditor, shall make arrangements for any travel required under this Agreement. The State Auditor shall pay the Contractor for travel and living expenses incurred by the Contractor, as documented by the Contractor in the manner prescribed by the State Auditor, in providing the auditing services that are the subject of this Agreement at locations other than the Contractor's usual place or places of business. Reimbursement shall be made as follows:
 - (i) Airfare: commercial carrier coach fare rate, supported by a receipt.
 - (ii) Other transportation: actual, reasonable expense, supported by a receipt.
 - (iii) Living expenses: actual expenses, not to exceed maximum state employee per diem rates, to be claimed and computed in accordance with [Department of Human Resources](#) travel reimbursement regulations in effect for excluded employees when the expenses are incurred.
- (c) The consideration to be paid to the Contractor, as provided herein, is in compensation for all of the Contractor's expenses incurred in performance of this Agreement, including travel and living expenses.
- (d) No minimum amount of work is guaranteed under this Agreement.

2. PAYMENTS

- (a) On a monthly basis, each Contractor staff person shall complete a timesheet and submit it by email to the State's Project Coordinator.
- (b) Whenever payment is owed by the State, the Contractor shall submit invoices on a monthly basis by the tenth (10th) day of each month. The invoices shall include a separate itemized accounting of all charges, including appropriate original receipts for travel and other administrative expenses. Use an Excel spreadsheet and include the date, contract employee name and title, hours, and rate.
- (c) Each invoice submitted by the Contractor shall include the following:
 - (i) The contract number as it appears on this Agreement.
 - (ii) The Contractor's full name, company name (if applicable), and billing address as it appears in this Agreement.
 - (iii) An invoice number and invoice date.

- (iv) A separate line item for each day. Include the date, contract employee name and title, hours, and rate. Use an Excel spreadsheet to prepare this information.
- (v) The signature of the Contractor or the Contractor's representative.
- (d) Email the Excel spreadsheet and invoices to accounting@auditor.ca.gov.
- (e) Mail the original invoices and a duplicate to:
California State Auditor's Office
Attention: Accounting
621 Capitol Mall, Suite 1200
Sacramento, CA 95814
- (f) Ten percent (10%) of each approved payment will be withheld and retained until all conditions stipulated in the Agreement have been satisfied. Failure by the Contractor to satisfactorily complete all conditions stipulated in this Agreement may result in forfeiture of any such funds withheld pursuant to the State Auditor's ten percent (10%) retention policy.
- (g) The Contractor shall keep and preserve all back-up documentation to support the entries included in its invoices submitted to the State for a period of three (3) years after final payment is made unless a longer period of records retention is agreed upon. The Contractor agrees to allow the State Auditor access to such records during normal business hours and to allow interviews of any employees who reasonably might have information related to such records.
- (h) As a necessary precursor to receiving payment from the State, the Contractor, unless a state agency or other governmental entity, shall maintain on file with the State a completed Payee Data Record (STD 204).

3. BUDGET CONTINGENCY CLAUSE

- (a) It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.
- (b) If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an agreement amendment to Contractor to reflect the reduced amount.

4. PROMPT PAYMENT CLAUSE

Payment will be made in accordance with, and within the time specified in, Government Code Chapter 4.5, commencing with section 927.

EXHIBIT C - INFORMATION TECHNOLOGY TERMS AND CONDITIONS (GSPD-401IT)

1. DEFINITIONS

Unless otherwise specified in the Statement of Work, the following terms shall be given the meaning shown, unless context requires otherwise.

- (a) “Acceptance Tests” means those tests performed during the Performance Period which are intended to determine compliance of Equipment and Software with the specifications and all other Attachments incorporated herein by reference and to determine the reliability of the Equipment.
- (b) “Application Program” means a computer program which is intended to be executed for the purpose of performing useful work for the user of the information being processed. Application programs are developed or otherwise acquired by the user of the Hardware/Software system, but they may be supplied by the Contractor.
- (c) “Attachment” means a mechanical, electrical, or electronic interconnection to the Contractor-supplied Machine or System of Equipment, manufactured by other than the original equipment manufacturer that is not connected by the Contractor.
- (d) “Business entity” means any individual, business, partnership, joint venture, corporation, S-corporation, limited liability company, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.
- (e) “Buyer” means the State’s authorized contracting official.
- (f) “Commercial Hardware” means Hardware developed or regularly used that: (i) has been sold, leased, or licensed to the general public; (ii) has been offered for sale, lease, or license to the general public; (iii) has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this Contract; or (iv) satisfies a criterion expressed in (i), (ii), or (iii) above and would require only minor modifications to meet the requirements of this Contract.
- (g) “Commercial Software” means Software developed or regularly used that: (i) has been sold, leased, or licensed to the general public; (ii) has been offered for sale, lease, or license to the general public; (iii) has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this Contract; or (iv) satisfies a criterion expressed in (i), (ii), or (iii) above and would require only minor modifications to meet the requirements of this Contract.
- (h) “Contract” means this Contract or agreement (including any purchase order), by whatever name known or in whatever format used.
- (i) “Custom Software” means Software that does not meet the definition of Commercial Software.

- (j) "Contractor" means the Business Entity with whom the State enters into this Contract. Contractor shall be synonymous with "supplier", "vendor" or other similar term.
- (k) "Data Processing Subsystem" means a complement of Contractor-furnished individual Machines, including the necessary controlling elements (or the functional equivalent), Operating Software and Software, if any, which are acquired to operate as an integrated group, and which are interconnected entirely by Contractor-supplied power and/or signal cables; e.g., direct access controller and drives, a cluster of terminals with their controller, etc.
- (l) "Data Processing System (System)" means the total complement of Contractor-furnished Machines, including one or more central processors (or instruction processors), Operating Software which are acquired to operate as an integrated group.
- (m) "Deliverables" means Goods, Software, Information Technology, telecommunications technology, Hardware, and other items (e.g. reports) to be delivered pursuant to this Contract, including any such items furnished incident to the provision of services.
- (n) "Designated CPU(s)" means for each product, if applicable the central processing unit of the computers or the server unit, including any associated peripheral units. If no specific "Designated CPU(s)" are specified on the Contract, the term shall mean any and all CPUs located at the site specified therein.
- (o) "Documentation" means manuals and other printed materials necessary or useful to the State in its use or maintenance of the Equipment or Software provided hereunder. Manuals and other printed materials customized for the State hereunder constitute Work Product if such materials are required by the Statement of Work.
- (p) "Equipment" is an all-inclusive term which refers either to individual Machines or to a complete Data Processing System or Subsystem, including its Hardware and Operating Software (if any).
- (q) "Equipment Failure" is a malfunction in the Equipment, excluding all external factors, which prevents the accomplishment of the Equipment's intended function(s). If microcode or Operating Software residing in the Equipment is necessary for the proper operation of the Equipment, a failure of such microcode or Operating Software which prevents the accomplishment of the Equipment's intended functions shall be deemed to be an Equipment Failure.
- (r) "Facility Readiness Date" means the date specified in the Statement of Work by which the State must have the site prepared and available for Equipment delivery and installation.
- (s) "Goods" means all types of tangible personal property, including but not limited to materials, supplies, and Equipment (including computer and telecommunications Equipment).

- (t) "Hardware" usually refers to computer Equipment and is contrasted with Software. See also Equipment.
- (u) "Installation Date" means the date specified in the Statement of Work by which the Contractor must have the ordered Equipment ready (certified) for use by the State.
- (v) "Information Technology" includes, but is not limited to, all electronic technology systems and services, automated information handling, System design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications which include voice, video, and data communications, requisite System controls, simulation, electronic commerce, and all related interactions between people and Machines.
- (w) "Machine" means an individual unit of a Data Processing System or Subsystem, separately identified by a type and/or model number, comprised of but not limited to mechanical, electro-mechanical, and electronic parts, microcode, and special features installed thereon and including any necessary Software, e.g., central processing unit, memory module, tape unit, card reader, etc.
- (x) "Machine Alteration" means any change to a Contractor-supplied Machine which is not made by the Contractor, and which results in the Machine deviating from its physical, mechanical, electrical, or electronic (including microcode) design, whether or not additional devices or parts are employed in making such change.
- (y) "Maintenance Diagnostic Routines" means the diagnostic programs customarily used by the Contractor to test Equipment for proper functioning and reliability.
- (z) "Manufacturing Materials" means parts, tools, dies, jigs, fixtures, plans, drawings, and information produced or acquired, or rights acquired, specifically to fulfill obligations set forth herein.
- (aa) "Mean Time Between Failure (MTBF)" means the average expected or observed time between consecutive failures in a System or component.
- (bb) "Mean Time to Repair (MTTR)" means the average expected or observed time required to repair a System or component and return it to normal operation.
- (cc) "Operating Software" means those routines, whether or not section 12100), and 3.6 (commencing with section 12125) identified as Program Products, that reside in the Equipment and are required for the Equipment to perform its intended function(s), and which interface the operator, other Contractor-supplied programs, and user programs to the Equipment.
- (dd) "Operational Use Time" means for performance measurement purposes, that time during which Equipment is in actual operation by the State. For maintenance, Operational Use Time purposes, that time during which Equipment is in actual operation and is not synonymous with power-on time.

- (ee) "Period of Maintenance Coverage" means the period of time, as selected by the State, during which maintenance services are provided by the Contractor for a fixed monthly charge, as opposed to an hourly charge for services rendered. The Period of Maintenance Coverage consists of the Principal Period of Maintenance and any additional hours of coverage per day, and/or increased coverage for weekends and holidays.
- (ff) "Preventive Maintenance" means that maintenance, performed on a scheduled basis by the Contractor, which is designed to keep the Equipment in proper operating condition.
- (gg) "Principal Period of Maintenance" means any nine consecutive hours per day (usually between the hours of 7:00 a.m. and 6:00 p.m.) as selected by the State, including an official meal period not to exceed one hour, Monday through Friday, excluding holidays observed at the installation.
- (hh) "Programming Aids" means Contractor-supplied programs and routines executable on the Contractor's Equipment which assists a programmer in the development of applications including language processors, sorts, communications modules, database management systems, and utility routines (tape-to-disk routines, disk-to-print routines, etc.).
- (ii) "Program Product" means programs, routines, subroutines, and related items which are proprietary to the Contractor and which are licensed to the State for its use, usually on the basis of separately stated charges and appropriate contractual provisions.
- (jj) "Remedial Maintenance" means that maintenance performed by the Contractor which results from Equipment (including Operating Software) failure, and which is performed as required, i.e., on an unscheduled basis.
- (kk) "Software" means an all-inclusive term which refers to any computer programs, routines, or subroutines supplied by the Contractor, including Operating Software, Programming Aids, Application Programs, and Program Products.
- ll) "Software Failure" means a malfunction in the Contractor-supplied Software, other than Operating Software, which prevents the accomplishment of work, even though the Equipment (including its Operating Software) may still be capable of operating properly. For Operating Software failure, see definition of Equipment Failure.
- (mm) "State" means the government of the State of California, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the State of California.
- (nn) "System" means the complete collection of Hardware, Software and services as described in this Contract, integrated and functioning together, and performing in accordance with this Contract.

- (oo) "U.S. Intellectual Property Rights" means intellectual property rights enforceable in the United States of America, including without limitation rights in trade secrets, copyrights, and U.S. patents.

2. CONTRACT FORMATION

- (a) If this Contract results from a sealed bid offered in response to a solicitation conducted pursuant to Chapters 2 (commencing with section 10290), 3 (commencing with of Part 2 of Division 2 of the Public Contract Code (PCC)), then Contractor's bid is a firm offer to the State which is accepted by the issuance of this Contract and no further action is required by either party.
- (b) If this Contract results from a solicitation other than described in paragraph a), above, the Contractor's quotation or proposal is deemed a firm offer and this Contract document is the State's acceptance of that offer.
- (c) If this Contract resulted from a joint bid, it shall be deemed one indivisible Contract. Each such joint Contractor will be jointly and severally liable for the performance of the entire Contract. The State assumes no responsibility or obligation for the division of orders or purchases among joint Contractors.

3. COMPLETE INTEGRATION

This Contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the Contract.

4. SEVERABILITY

The Contractor and the State agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.

5. INDEPENDENT CONTRACTOR

Contractor and the agents and employees of the Contractor, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the State.

6. APPLICABLE LAW

This Contract shall be governed by and shall be interpreted in accordance with the laws of the State of California; venue of any action brought with regard to this Contract shall be in Sacramento County, Sacramento, California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.

7. COMPLIANCE WITH STATUTES AND REGULATIONS

- (a) The State and the Contractor warrants and certifies that in the performance of this Contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California. The Contractor agrees to

indemnify the State against any loss, cost, damage or liability by reason of the Contractor's violation of this provision.

- (b) The State will notify the Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- (c) The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the California State Auditor will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.
- (d) If this Contract is in excess of \$554,000, it is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA).
- (e) To the extent that this Contract falls within the scope of Government Code section 11135, the Contractor hereby agrees to respond to and resolve any complaint brought to its attention, regarding accessibility of its products or services.

8. CONTRACTOR'S POWER AND AUTHORITY

The Contractor warrants that it has full power and authority to grant the rights herein granted and will hold the State harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, the Contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the State under this Contract.

- (a) The State will notify the Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- (b) The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the California State Auditor will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

9. ASSIGNMENT

This Contract shall not be assignable by the Contractor in whole or in part without the written consent of the State. The State's consent shall not be unreasonably withheld or delayed. For the purpose of this paragraph, the State will not unreasonably prohibit the Contractor from freely assigning its right to payment, provided that the Contractor remains responsible for its obligations hereunder.

10. WAIVER OF RIGHTS

Any action or inaction by the State or the failure of the State on any occasion, to enforce any right or provision of the Contract, shall not be construed to be a waiver by the State of its rights hereunder and shall not prevent the State from enforcing such provision or right on any future occasion. The rights and remedies of the State herein are cumulative and are in addition to any other rights or remedies that the State may have at law or in equity.

11. ORDER OF PRECEDENCE

In the event of any inconsistency between the articles, attachments, specifications or provisions which constitute this Contract, the following order of precedence shall apply:

- (a) These General Provisions – Information Technology (In the instances provided herein where the paragraph begins: "Unless otherwise specified in the Statement of Work" provisions specified in the Statement of Work replacing these paragraphs shall take precedence over the paragraph referenced in these General Provisions);
- (b) Standard Agreement STD 213, and any amendments thereto;
- (c) Other Special Provisions;
- (d) Statement of Work, including any specifications incorporated by reference herein;
- (e) Cost worksheets; and
- (f) All other attachments incorporated in the Contract by reference.

12. PACKING AND SHIPMENT

- (a) All Goods are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified to:
 - (i) show the number of the container and the total number of containers in the shipment; and
 - (ii) the number of the container in which the packing sheet has been enclosed.

- (b) All shipments by the Contractor or its subcontractors must include packing sheets identifying: the State's Contract number; item number; quantity and unit of measure; part number and description of the Goods shipped; and appropriate evidence of inspection, if required. Goods for different Contracts shall be listed on separate packing sheets.
- (c) Shipments must be made as specified in this Contract, as it may be amended, or otherwise directed in writing by the State's Transportation Management Unit within the California State Auditor's Procurement Division.

13. TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES

No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by the State unless expressly included and itemized in the Contract.

- (a) The Contractor must strictly follow Contract requirements regarding Free on Board (F.O.B.), freight terms and routing instructions. The State may permit use of an alternate carrier at no additional cost to the State with advance written authorization of the Buyer.
- (b) If "prepay and add" is selected, supporting freight bills are required when over \$50, unless an exact freight charge is approved by the Transportation Management Unit within the California State Auditor's Procurement Division and a waiver is granted.
- (c) On "F.O.B. Shipping Point" transactions, should any shipments under the Contract be received by the State in a damaged condition and any related freight loss and damage claims filed against the carrier or carriers be wholly or partially declined by the carrier or carriers with the inference that damage was the result of the act of the shipper such as inadequate packaging or loading or some inherent defect in the Equipment and/or material, the Contractor, on request of the State, shall at Contractor's own expense assist the State in establishing carrier liability by supplying evidence that the Equipment and/or material was properly constructed, manufactured, packaged, and secured to withstand normal transportation conditions.

14. DELIVERY

The Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If the Contractor delivers in excess of the quantities specified herein, the State shall not be required to make any payment for the excess Deliverables, and may return them to Contractor at the Contractor's expense or utilize any other rights available to the State at law or in equity.

15. SUBSTITUTIONS

Substitution of Deliverables may not be tendered without advance written consent of the Buyer. The Contractor shall not use any specification in lieu of those contained in the Contract without written consent of the Buyer.

16. INSPECTION, ACCEPTANCE AND REJECTION

Unless otherwise specified in the Statement of Work:

- (a) When acquiring Commercial Hardware or Commercial Software, the State shall rely on Contractor's existing quality assurance system as a substitute for State inspection and testing. For all other acquisitions, Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to the State covering Deliverables and services under this Contract and will tender to the State only those Deliverables that have been inspected and found to conform to this Contract's requirements. The Contractor will keep records evidencing inspections and their result, and will make these records available to the State during Contract performance and for three years after final payment. The Contractor shall permit the State to review procedures, practices, processes, and related documents to determine the acceptability of the Contractor's quality assurance System or other similar business practices related to performance of the Contract.
- (b) All Deliverables may be subject to inspection and test by the State or its authorized representatives.
- (c) The Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the State. The Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.
- (d) Subject to subsection 16 (a) above, all Deliverables may be subject to final inspection, test and acceptance by the State at destination, notwithstanding any payment or inspection at source.
- (e) The State shall give written notice of rejection of Deliverables delivered or services performed hereunder within a reasonable time after receipt of such Deliverables or performance of such services. Such notice of rejection will state the respects in which the Deliverables do not substantially conform to their specifications. If the State does not provide such notice of rejection within fifteen (15) days of delivery for purchases of Commercial Hardware or Commercial Software or thirty (30) days of delivery for all other purchases, such Deliverables and services will be deemed to have been accepted. Acceptance by the State will be final and irreversible, except as it relates to latent defects, fraud, and gross mistakes amounting to fraud. Acceptance shall not be construed to waive any warranty rights that the State might have at law or by express reservation in this Contract with respect to any nonconformity.

- (f) Unless otherwise specified in the Statement of Work, title to Equipment shall remain with the Contractor and assigns, if any, until such time as successful acceptance testing has been achieved. Title to a special feature installed on a Machine and for which only a single installation charge was paid shall pass to the State at no additional charge, together with title to the Machine on which it was installed.

17. SAMPLES

- (a) Samples of items may be required by the State for inspection and specification testing and must be furnished free of expense to the State. The samples furnished must be identical in all respects to the products bid and/or specified in the Contract.
- (b) Samples, if not destroyed by tests, may, upon request made at the time the sample is furnished, be returned at the Contractor's expense.

18. WARRANTY

- (a) Unless otherwise specified in the Statement of Work, the warranties in this subsection a) begin upon delivery of the goods or services in question and end one (1) year thereafter. The Contractor warrants that (i) Deliverables and services furnished hereunder will substantially conform to the requirements of this Contract (including without limitation all descriptions, specifications, and drawings identified in the Statement of Work), and (ii) the Deliverables will be free from material defects in materials and workmanship. Where the parties have agreed to design specifications (such as a Detailed Design Document) and incorporated the same or equivalent in the Statement of Work directly or by reference, the Contractor will warrant that its Deliverables provide all material functionality required thereby. In addition to the other warranties set forth herein, where the Contract calls for delivery of Commercial Software, the Contractor warrants that such Software will perform in accordance with its license and accompanying Documentation. The State's approval of designs or specifications furnished by Contractor shall not relieve the Contractor of its obligations under this warranty.
- (b) The Contractor warrants that Deliverables furnished hereunder (i) will be free, at the time of delivery, of harmful code (i.e. computer viruses, worms, trap doors, time bombs, disabling code, or any similar malicious mechanism designed to interfere with the intended operation of, or cause damage to, computers, data, or Software); and (ii) will not infringe or violate any U.S. Intellectual Property Right. Without limiting the generality of the foregoing, if the State believes that harmful code may be present in any Commercial Software delivered hereunder, the Contractor will, upon the State's request, provide a new or clean install of the Software.
- (c) Unless otherwise specified in the Statement of Work:
 - (i) The Contractor does not warrant that any Software provided hereunder is error-free or that it will run without immaterial interruption.

- (ii) The Contractor does not warrant and will have no responsibility for a claim to the extent that it arises directly from (A) a modification made by the State, unless such modification is approved or directed by the Contractor, (B) use of Software in combination with or on products other than as specified by the Contractor, or (C) misuse by the State.
- (iii) Where the Contractor resells Commercial Hardware or Commercial Software it purchased from a third party, Contractor, to the extent it is legally able to do so, will pass through any such third party warranties to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will not relieve the Contractor from Contractor's warranty obligations set forth above.
- (d) All warranties, including special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies, and governmental users of the Deliverables or services.
- (e) Except as may be specifically provided in the Statement of Work or elsewhere in this Contract, for any breach of the warranties provided in this section, the State's exclusive remedy and the Contractor's sole obligation will be limited to:
 - (i) re-performance, repair, or replacement of the nonconforming Deliverable (including without limitation an infringing Deliverable) or service; or
 - (ii) should the State in its sole discretion consent, refund of all amounts paid by the State for the nonconforming Deliverable or service and payment to the State of any additional amounts necessary to equal the State's Cost to Cover. "Cost to Cover" means the cost, properly mitigated, of procuring Deliverables or services of equivalent capability, function, and performance. The payment obligation in subsection (e)(ii) above will not exceed the limits on the Contractor's liability set forth in the section entitled "Limitation of Liability."
- (f) EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED IN THIS SECTION, THE CONTRACTOR MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

19. SAFETY AND ACCIDENT PREVENTION

In performing work under this Contract on State premises, the Contractor shall conform to any specific safety requirements contained in the Contract or as required by law or regulation. The Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this Contract in accordance with the default provisions hereof.

20. INSURANCE

The Contractor shall maintain all commercial general liability insurance, workers' compensation insurance and any other insurance required under the Contract. The Contractor shall furnish insurance certificate(s) evidencing required insurance coverage acceptable to the State, including endorsements showing the State as an "additional insured" if required under the Contract. Any required endorsements requested by the State must be separately provided; merely referring to such coverage on the certificates(s) is insufficient for this purpose. When performing work on state-owned or controlled property, Contractor shall provide a waiver of subrogation in favor of the State for its workers' compensation policy.

21. TERMINATION FOR NON-APPROPRIATION OF FUNDS

- (a) If the term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of the Contract is contingent on the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, the Contractor agrees to take back any affected Deliverables furnished under this Contract, terminate any services supplied to the State under this Contract, and relieve the State of any further obligation therefor.
- (b) The State agrees that if it appears likely that subsection a) above will be invoked, the State and Contractor shall agree to take all reasonable steps to prioritize work and Deliverables and minimize the incurrence of costs prior to the expiration of funding for this Contract.
- (c) The State agrees that if paragraph a) above is invoked, commercial hardware and software that has not been paid for shall be returned to the Contractor in substantially the same condition in which delivered to the State, subject to normal wear and tear. The State further agrees to pay for packing, crating, transportation to the Contractor's nearest facility and for reimbursement to the Contractor for expenses incurred for their assistance in such packing and crating.

22. TERMINATION FOR THE CONVENIENCE OF THE STATE

- (a) The State may terminate performance of work under this Contract for its convenience in whole or, from time to time, in part, if the California State Auditor, Deputy Director Procurement Division, or designee, determines that a termination is in the State's interest. The California State Auditor, Deputy Director, Procurement Division, or designee, shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date thereof.
- (b) After receipt of a Notice of Termination, and except as directed by the State, the Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Contractor shall:
 - (i) Stop work as specified in the Notice of Termination.

- (ii) Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continuing portion of the Contract.
- (iii) Terminate all subcontracts to the extent they relate to the work terminated.
- (iv) Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts.
- (c) After termination, the Contractor shall submit a final termination settlement proposal to the State in the form and with the information prescribed by the State. The Contractor shall submit the proposal promptly, but no later than 90 days after the effective date of termination, unless a different time is provided in the Statement of Work or in the Notice of Termination.
- (d) The Contractor and the State may agree upon the whole or any part of the amount to be paid as requested under subsection (c) above.
- (e) Unless otherwise set forth in the Statement of Work, if the Contractor and the State fail to agree on the amount to be paid because of the termination for convenience, the State will pay the Contractor the following amounts, provided that in no event will total payments exceed the amount payable to the Contractor if the Contract had been fully performed:
 - (i) The Contract price for Deliverables or services accepted or retained by the State and not previously paid for, adjusted for any savings on freight and other charges; and
 - (ii) The total of:
 - A. The reasonable costs incurred in the performance of the work terminated, including initial costs and preparatory expenses allocable thereto, but excluding any cost attributable to Deliverables or services paid or to be paid;
 - B. The reasonable cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract; and
 - C. Reasonable storage, transportation, demobilization, unamortized overhead and capital costs, and other costs reasonably incurred by the Contractor in winding down and terminating its work.
- (f) The Contractor will use generally accepted accounting principles, or accounting principles otherwise agreed to in writing by the parties, and sound business practices in determining all costs claimed, agreed to, or determined under this clause.

23. TERMINATION FOR DEFAULT

- (a) The State may, subject to the clause titled "Force Majeure" and to sub-section d) below, by written notice of default to the Contractor, terminate this Contract in whole or in part if the Contractor fails to:

- (i) Deliver the Deliverables or perform the services within the time specified in the Contract or any amendment thereto;
 - (ii) Make progress, so that the lack of progress endangers performance of this Contract; or
 - (iii) Perform any of the other provisions of this Contract.
- (b) The State's right to terminate this Contract under subsection a) above, may be exercised only if the failure constitutes a material breach of this Contract and if the Contractor does not cure such failure within the time frame stated in the State's cure notice, which in no event will be less than fifteen (15) days, unless the Statement of Work calls for a different period.
- (c) If the State terminates this Contract in whole or in part pursuant to this section, it may acquire, under terms and in the manner the Buyer considers appropriate, Deliverables or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those Deliverables and services, including without limitation costs third party vendors charge for Manufacturing Materials (but subject to the clause entitled "Limitation of Liability"). However, the Contractor shall continue the work not terminated.
- (d) If the Contract is terminated for default, the State may require the Contractor to transfer title, or in the case of licensed Software, license, and deliver to the State, as directed by the Buyer, any:
 - (i) completed Deliverables
 - (ii) partially completed Deliverables, and
 - (iii) subject to provisions of subsection e) below, Manufacturing Materials related to the terminated portion of this Contract. Nothing in this subsection d) will be construed to grant the State rights to Deliverables that it would not have received had this Contract been fully performed. Upon direction of the Buyer, the Contractor shall also protect and preserve property in its possession in which the State has an interest.
- (e) The State shall pay Contract price for completed Deliverables delivered and accepted and items the State requires the Contractor to transfer under section (d) above. Unless the Statement of Work calls for different procedures or requires no-charge delivery of materials, the Contractor and Buyer shall attempt to agree on the amount of payment for Manufacturing Materials and other materials delivered and accepted by the State for the protection and preservation of the property, provided that where the Contractor has billed the State for any such materials, no additional charge will apply. Failure to agree will constitute a dispute under the Disputes clause. The State may withhold from these amounts any sum it determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.
- (f) If after termination, it is determined by a final decision that Contractor's negligence or willful misconduct, or (iv) to costs the Contractor was not in default,

the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the State.

- (g) Both parties, State and Contractor, upon any termination for default, have a duty to mitigate the damages suffered by it.
- (h) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this Contract, and are subject to the clause titled "Limitation of Liability."

24. FORCE MAJEURE

Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include, but are not limited to:

- (a) Acts of God or of the public enemy, and
- (b) Acts of the federal or State government in either its sovereign or contractual capacity.

If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform.

25. RIGHTS AND REMEDIES OF STATE FOR DEFAULT

- (a) In the event any Deliverables furnished or services provided by the Contractor in the performance of the Contract should fail to conform to the requirements herein, or to the sample submitted by the Contractor, the State may reject the same, and it shall become the duty of the Contractor to reclaim and remove the item promptly or to correct the performance of services, without expense to the State, and immediately replace all such rejected items with others conforming to the Contract.
- (b) In addition to any other rights and remedies the State may have, the State may require the Contractor, at Contractor's expense, to ship Deliverables via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of the Contractor.
- (c) In the event of the termination of the Contract, either in whole or in part, by reason of default or breach by the Contractor, any loss or damage sustained by the State in procuring any items which the Contractor agreed to supply shall be borne and paid for by the Contractor (but subject to the clause entitled "Limitation of Liability").
- (d) The State reserves the right to offset the reasonable cost of all damages caused to the State against any outstanding invoices or amounts owed to the Contractor or to make a claim against the Contractor therefor.

26. LIMITATION OF LIABILITY

- (a) Except as may be otherwise approved by the California State Auditor's Deputy Director, Procurement Division or their designee, Contractor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the Purchase Price. For purposes of this subsection a), "Purchase Price" will mean the aggregate Contract price, except that, with respect to a Contract under which multiple purchase orders will be issued (e.g., a Master Agreement or Multiple Award Schedule contract), "Purchase Price" will mean the total price of the purchase order for the Deliverable(s) or service(s) that gave rise to the loss, such that the Contractor will have a separate limitation of liability for each purchase order.
- (b) The foregoing limitation of liability shall not apply (i) to any liability under the General Provisions entitled "Compliance with Statutes and Regulations" (ii) to liability under the General Provisions, entitled "Patent, Copyright, and Trade Secret Indemnity" or to any other liability (including without limitation indemnification obligations) for infringement of third party intellectual property rights; (iii) to claims arising under provisions herein calling for indemnification for third party claims against the State for death, bodily injury to persons or damage to real or tangible personal property caused by the Contractor's negligence or willful misconduct; or (iv) to costs or attorney's fees that the State becomes entitled to recover as a prevailing party in any action.
- (c) The State's liability for damages for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the Purchase Price, as that term is defined in subsection a) above. Nothing herein shall be construed to waive or limit the State's sovereign immunity or any other immunity from suit provided by law.
- (d) In no event will either the Contractor or the State be liable for consequential, incidental, indirect, special, or punitive damages, even if notification has been given as to the possibility of such damages, except (i) to the extent that the Contractor's liability for such damages is specifically set forth in the Statement of Work or (ii) to the extent that the Contractor's liability for such damages arises out of subsection b)(i), b)(ii), or b)(iv) above.

27. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY

- (a) The Contractor shall be liable for damages arising out of injury to the person and/or damage to the property of the State, employees of the State, persons designated by the State for training, or any other person(s) other than agents or employees of the Contractor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at the Contractor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the Contractor.

- (b) The Contractor shall not be liable for damages arising out of or caused by an alteration or an Attachment not made or installed by the Contractor, or for damage to alterations or Attachments that may result from the normal operation and maintenance of the Deliverables provided by the Contractor during the Contract.

28. INDEMNIFICATION

The Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses due to the injury or death of any individual, or the loss or damage to any real or tangible personal property, resulting from the willful misconduct or negligent acts or omissions of the Contractor or any of its affiliates, agents, subcontractors, employees, suppliers, or laborers furnishing or supplying work, services, materials, or supplies in connection with the performance of this Contract. Such defense and payment will be conditional upon the following:

- (a) The State will notify the Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- (b) The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the California State Auditor will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

29. INVOICES

Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate and shall include the Contract number; release order number (if applicable); item number; unit price, extended item price and invoice total amount. State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.

30. REQUIRED PAYMENT DATE

Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code section 927 et. seq. Unless expressly exempted by statute, the Act requires State agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of Deliverables or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.

31. CONTRACT MODIFICATION

No amendment or variation of the terms of this Contract shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Contract is binding on any of the parties.

32. CONFIDENTIALITY OF DATA

All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the Contractor in order to carry out this Contract, or which become available to the Contractor in carrying out this Contract, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the Contractor. If the methods and procedures employed by the Contractor for the protection of the Contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Contractor's possession without obligation of confidentiality, is independently developed by the Contractor outside the scope of this Contract, or is rightfully obtained from third parties.

33. NEWS RELEASES

Unless otherwise exempted, news releases, endorsements, advertising, and social media content pertaining to this Contract shall not be made without prior written approval of the California State Auditor.

34. DOCUMENTATION

- (a) The Contractor agrees to provide to the State, at no charge, all Documentation as described within the Statement of Work, and updated versions thereof, which are necessary or useful to the State in its use of the Equipment or Software provided hereunder. The Contractor agrees to provide additional Documentation at prices not in excess of charges made by the Contractor to its other customers for similar Documentation.
- (b) If the Contractor is unable to perform maintenance or the State desires to perform its own maintenance on Equipment purchased under this Contract, then upon written notice by the State the Contractor will provide at Contractor's then current rates and fees adequate and reasonable assistance including relevant Documentation to allow the State to maintain the Equipment based on the Contractor's methodology. The Contractor agrees that the State may reproduce such Documentation for its own use in maintaining the Equipment. If the Contractor is unable to perform maintenance, the Contractor agrees to license

any other Contractor that the State may have hired to maintain the Equipment to use the above noted Documentation. The State agrees to include the Contractor's copyright notice on any such Documentation reproduced, in accordance with copyright instructions to be provided by the Contractor.

35. PROTECTION OF PROPRIETARY SOFTWARE AND OTHER PROPRIETARY DATA

- (a) The State agrees that all material appropriately marked or identified in writing as proprietary and furnished hereunder is provided for the State's exclusive use for the purposes of this Contract only. All such proprietary data shall remain the property of the Contractor. The State agrees to take all reasonable steps to insure that such proprietary data are not disclosed to others, without prior written consent of the Contractor, subject to the California Public Records Act.
- (b) The State will insure, prior to disposing of any media, that any licensed materials contained thereon have been erased or otherwise destroyed.
- (c) The State agrees that it will take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to licensed software and other proprietary data to satisfy its obligations in this Contract with respect to use, copying, modification, protection and security of proprietary software and other proprietary data.

36. DISPUTES

- (a) The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, the Contractor shall submit to the contracting State Auditor or designee a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to or involving this Contract. Contractor's written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the Contract adjustment for which Contractor believes the State is liable. The contracting State Auditor or designee shall have 30 days after receipt of Contractor's written demand invoking this section "Disputes" to render a written decision. If a written decision is not rendered within 30 days after receipt of the Contractor's demand, it shall be deemed a decision adverse to the Contractor's contention. If the Contractor is not satisfied with the decision of the contracting State Auditor or designee, the Contractor may appeal the decision, in writing, within 15 days of its issuance (or the expiration of the 30 day period in the event no decision is rendered by the contracting department), to the California State Auditor, Deputy Director, Procurement Division, who shall have 45 days to render a final decision. If the Contractor does not appeal the decision of the contracting State Auditor or designee, the decision shall be conclusive and binding regarding the dispute and the Contractor shall be barred from commencing an action in court, or with the Victim Compensation

Government Claims Board, for failure to exhaust Contractor's administrative remedies.

- (b) Pending the final resolution of any dispute arising under, related to or involving this Contract, Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of Goods or providing of services in accordance with the State's instructions regarding this Contract. Contractor's failure to diligently proceed in accordance with the State's instructions regarding this Contract shall be considered a material breach of this Contract.
- (c) Any final decision of the State shall be expressly identified as such, shall be in writing, and shall be signed by the Deputy Director, Procurement Division if an appeal was made. If the Deputy Director, Procurement Division fails to render a final decision within 45 days after receipt of the Contractor's appeal for a final decision, it shall be deemed a final decision adverse to the Contractor's contentions. The State's final decision shall be conclusive and binding regarding the dispute unless the Contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.
- (d) For disputes involving purchases made by the California State Auditor, Procurement Division, the Contractor shall submit to the State Auditor or designee a written demand for a final decision, which shall be fully supported in the manner described in subsection a above. The State Auditor or designee shall have 30 days to render a final decision. If a final decision is not rendered within 30 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contention. The final decision shall be conclusive and binding regarding the dispute unless the Contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.
- (e) The dates of decision and appeal in this section may be modified by mutual consent, as applicable, excepting the time to commence an action in a court of competent jurisdiction.

37. STOP WORK

- (a) The State may, at any time, by written Stop Work Order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this Contract for a period up to 45 days after the Stop Work Order is delivered to the Contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of 45 days after a Stop Work Order is delivered to

the Contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:

- (i) Cancel the Stop Work Order; or
 - (ii) Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this Contract.
- (b) If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the Contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if:
- (i) the Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance of any part of this Contract; and
 - (ii) the Contractor asserts its right to an equitable adjustment within 60 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.
- (c) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for the Convenience of the State, the State shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.
- (d) The State shall not be liable to the Contractor for loss of profits because of a Stop Work Order issued under this clause.

38. EXAMINATION AND AUDIT

The Contractor agrees that the State or its designated representative shall have the right to review and copy any records and supporting documentation directly pertaining to performance of this Contract. The Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. The Contractor agrees to allow the auditor(s) access to such records during normal business hours and in such a manner so as to not interfere unreasonably with normal business activities and to allow interviews of any employees or others who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Contract. The State shall provide reasonable advance written notice of such audit(s) to the Contractor.

39. FOLLOW-ON CONTRACTS

- (a) If the Contractor or its affiliates provides Technical Consulting and Direction (as defined below), the Contractor and its affiliates:

- (i) will not be awarded a subsequent Contract to supply the service or system, or any significant component thereof, that is used for or in connection with any subject of such Technical Consulting and Direction; and
 - (ii) will not act as consultant to any person or entity that does receive a Contract described in subsection (i). This prohibition will continue for one (1) year after termination of this Contract or completion of the Technical Consulting and Direction, whichever comes later.
- (b) “Technical Consulting and Direction” means services for which the Contractor received compensation from the State and includes:
 - (i) development of or assistance in the development of work statements, specifications, solicitations, or feasibility studies;
 - (ii) development or design of test requirements;
 - (iii) evaluation of test data;
 - (iv) direction of or evaluation of another Contractor;
 - (v) provision of formal recommendations regarding the acquisition of Information Technology products or services; or
 - (vi) provisions of formal recommendations regarding any of the above. For purposes of this section, “affiliates” are employees, directors, partners, joint venture participants, parent corporations, subsidiaries, or any other entity controlled by, controlling, or under common control with the Contractor. Control exists when an entity owns or directs more than fifty percent (50%) of the outstanding shares or securities representing the right to vote for the election of directors or other managing authority.
- (c) To the extent permissible by law, the California State Auditor, or designee, may waive the restrictions set forth in this section by written notice to the Contractor if the State Auditor determines their application would not be in the State’s best interest. Except as prohibited by law, the restrictions of this section will not apply:
 - (i) to follow-on advice given by vendors of commercial off-the-shelf products, including Software and Hardware, on the operation, integration, repair, or maintenance of such products after sale; or
 - (ii) where the State has entered into a master agreement for Software or services and the scope of work at the time of Contract execution expressly calls for future recommendations among the Contractor’s own products.
- (d) The restrictions set forth in this section are in addition to conflict of interest restrictions imposed on public Contractors by California Law (“Conflict Laws”). In the event of any inconsistency, such Conflict Laws override the provisions of this section, even if enacted after execution of this Contract.

40. PRIORITY HIRING CONSIDERATIONS

If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to

qualified recipients of aid under Welfare and Institutions Code section 11200 in accordance with PCC section 10353.

41. COVENANT AGAINST GRATUITIES

The Contractor warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the State with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the State shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items which the Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.

42. NONDISCRIMINATION CLAUSE

- a) During the performance of this Contract, the Contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. The Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part hereof as if set forth in full. The Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- b) The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.

43. NATIONAL LABOR RELATIONS BOARD CERTIFICATION

The Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two-year period because of the Contractor's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, PCC section 10296.

44. ASSIGNMENT OF ANTITRUST ACTIONS

Pursuant to Government Code sections 4552, 4553, and 4554, the following provisions are incorporated herein:

- (a) In submitting a bid to the State, the supplier offers and agrees that if the bid is accepted, it will assign to the State all rights, title, and interest in and to all causes of action it may have under section 4 of the Clayton Act (15 U.S.C. 15) or under the Cartwright Act (Chapter 2, commencing with section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of Goods, material or other items, or services by the supplier for sale to the State pursuant to the solicitation. Such assignment shall be made and become effective at the time the State tenders final payment to the supplier.
- (b) If the State receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the State any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the State as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.
- (c) Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and
 - (i) the assignee has not been injured thereby, or
 - (ii) the assignee declines to file a court action for the cause of action.

45. DRUG-FREE WORKPLACE CERTIFICATION

The Contractor certifies under penalty of perjury under the laws of the State of California that the Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- (a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code section 8355(a).
- (b) Establish a Drug-Free Awareness Program as required by Government Code section 8355(b) to inform employees about all of the following:
 - (i) the dangers of drug abuse in the workplace;
 - (ii) the person's or organization's policy of maintaining a drug-free workplace;
 - (iii) any available counseling, rehabilitation and employee assistance programs; and,
 - (iv) penalties that may be imposed upon employees for drug abuse violations.

- (c) Provide, as required by Government Code section 8355(c), that every employee who works on the proposed or resulting Contract:
 - (i) will receive a copy of the company's drug-free policy statement; and,
 - (ii) will agree to abide by the terms of the company's statement as a condition of employment on the Contract.

46. FOUR-DIGIT DATE COMPLIANCE

Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date Compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.

47. SWEATFREE CODE OF CONDUCT

- (a) Contractor declares under penalty of perjury that no equipment, materials, or supplies furnished to the State pursuant to the Contract have been produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The Contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code section 6108.
- (b) The Contractor agrees to cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of the State, the Department of Industrial Relations, or the Department of Justice to determine the Contractor's compliance with the requirements under paragraph (a).

48. RECYCLED CONTENT REQUIREMENTS

The Contractor shall certify in writing under penalty of perjury the minimum, if not exact, percentage of post-consumer material (as defined in the Public Contract Code (PCC) section 12200-12209), in products, materials, goods, or supplies offered or sold to the State that fall under any of the statutory categories regardless of whether the product meets the requirements of section 12209. The certification shall be provided by the Contractor, even if the product or good contains no postconsumer recycled material, and even if the postconsumer content is unknown. With respect to printer or duplication cartridges that comply with the requirements of section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (PCC 12205 (b)(2)). A state agency contracting officer may waive the certification requirements if the percentage of postconsumer material in the products, materials, goods, or supplies can be verified in a written advertisement, including, but not limited to, a product label, a catalog, or a manufacturer or vendor Internet web site. Contractors are to use, to the maximum extent economically feasible in the performance of the contract work, recycled content products (PCC 12203(d)).

49. CHILD SUPPORT COMPLIANCE ACT

For any Contract in excess of \$100,000, the Contractor acknowledges in accordance with PCC section 7110, that:

- (a) The Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable State and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- (b) The Contractor, to the best of its knowledge, is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

50. AMERICANS WITH DISABILITIES ACT

The Contractor assures the State that the Contractor complies with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

51. ELECTRONIC WASTE RECYCLING ACT OF 2003

The Contractor certifies that it complies with the applicable requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with section 42460 of the Public Resources Code. The Contractor shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.

52. USE TAX COLLECTION

In accordance with PCC section 10295.1, the Contractor certifies that it complies with the requirements of section 7101 of the Revenue and Taxation Code.

Contractor further certifies that it will immediately advise the State of any change in its retailer's seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of PCC section 10295.1.

53. EXPATRIATE CORPORATIONS

Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC sections 10286 and 10286.1, and is eligible to contract with the State.

54. DOMESTIC PARTNERS

For contracts over \$100,000 executed or amended after January 1, 2007, the Contractor certifies that the Contractor is in compliance with Public Contract Code section 10295.3.

55. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS

- (a) If for this Contract the Contractor made a commitment to achieve small business participation, then the Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code section 14841.)
- (b) If for this Contract the Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code section 999.5(d); Govt. Code section 14841.)

56. LOSS LEADER

It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in section 17030 of the Business and Professions Code. (PCC 12104.5(b)).

EXHIBIT D – SPECIAL TERMS AND CONDITIONS

1. CONTRACTOR PERSONNEL

- (a) The individual(s) named in **Exhibit A** of this Agreement as the person(s) authorized to perform services under the Agreement is/are essential to the Agreement. No other individual(s) employed by the Contractor may perform services under the Agreement without the prior written approval of the State. In the event that any individual named in **Exhibit A** as authorized to perform services under the Agreement ceases to be employed by the Contractor or no longer is assigned by the Contractor to perform services under the Agreement, the Contractor immediately shall provide written notice to the State and shall consult with the State regarding a replacement.
- (b) Prior to seeking approval from the State for any individual not already named in **Exhibit A** to perform services under the Agreement, the Contractor shall provide the State with the name and résumé of that individual for prompt preview and approval. If the State declines to approve the replacement of any individual named in **Exhibit A** as authorized to perform services under the Agreement, the State may terminate the Agreement immediately “for cause” as provided in **Exhibit C** of the Agreement. This provision shall not apply to support personnel such as clerical or administrative staff assigned to assist the individual(s) authorized to perform services under the Agreement.
- (c) In view of the sensitive nature of information reviewed during the course of audits and in compliance with the policy of the State Auditor to require its employees to undergo live-scanning background checks, Contractor personnel, including subcontractor personnel, shall also be subject to this requirement upon the request of the State. The State shall be responsible for obtaining and paying for background checks for each assigned employee of the Contractor or subcontractor. The Contractor is responsible for obtaining and paying for fingerprint fees for each assigned employee of the Contractor or subcontractor. The Contractor shall work with the State in establishing the process for conducting the live-scanning background checks.

2. SUBCONTRACTORS

Nothing in this Agreement or otherwise shall create any contractual relationship between the State and any subcontractors used by the Contractor to perform services under the Agreement, and no subcontractor shall relieve the Contractor of the Contractor’s responsibilities and obligations under the Agreement. The Contractor agrees to be responsible fully to the State for all acts and omissions of its subcontractors and of the persons the Contractor employs, either directly or indirectly, to perform services under the Agreement. The Contractor’s obligation to pay its subcontractors is an obligation that is entirely independent from the State’s obligation to pay the Contractor. As a result, the State shall have no obligation to pay or enforce the payment of any money to any subcontractor.

3. RECORD RETENTION

- (a) Any records obtained by the Contractor or any subcontractor or employee thereof during the course of the audit from any California public entity pursuant to the authority of the State are the exclusive property of the State and shall be returned to the State; however, the Contractor may retain copies of those records. All communications and workpaper records obtained, originated, or prepared by the Contractor pursuant to this Agreement, including papers, reports, charts, interview notes, and other documentation compiled by the Contractor pursuant to this Agreement, including the Contractor's administrative communications and records relating to this Agreement, shall become exclusive property of the Contractor. The Contractor shall make such documents available to the State upon request.
- (b) During the course of the audit, at the request of the State, the Contractor shall promptly return all originals of writings, including, but not limited to, electronic copies, that were obtained by the Contractor from any California public entity pursuant to the authority of the State in connection with the audit. Not later than 14 days following the completion of consulting services by the Contractor under this Agreement, the Contractor shall return all such original writings to the State. Notwithstanding the foregoing, the Contractor may retain copies of any such writings for workpaper purposes.
- (c) If Contractor is requested pursuant to subpoena or other legal process to produce its documents relating to this engagement for the State in judicial or administrative proceedings to which Contractor is not a party, the Contractor shall immediately notify the State and take all appropriate legal actions to protect the documents and information from disclosure. The State shall reimburse the Contractor at the Contractor's standard billing rates for its professional time and expenses, including reasonable attorney's fees, incurred in responding to such requests.
- (d) In the event that the State receives a request pursuant to the California Public Records Act or applicable federal law for copies of the State's records in the possession of the Contractor and relating to the work performed by the Contractor pursuant to this Agreement, the Contractor shall assist the State in producing those copies of those records to the extent they are required to be released under state or federal law.
- (e) Except as otherwise provided by law, latent data such as deleted files and other non-logical data types, such as memory dumps, swap files, temporary files, printer spool files, and metadata that can customarily only be retrieved by computer forensics experts and are generally considered inaccessible without the use of specialized tools and techniques, will not be within the requirement for the return of records as contemplated by this paragraph of the Agreement.
- (f) The Contractor shall retain all original work described in subparagraph (a) of this Paragraph 3 for a period of seven (7) years from the date of publication of the audit. Upon completion of those seven (7) years, the Contractor shall consult

with the State on whether those records shall be destroyed. If the State requests originals either during the course of the audit or during the seven (7) year retention period, the Contractor shall promptly send the requested originals to the State.

4. ENCRYPTION AND INFORMATION PRIVACY POLICY

The Contractor shall adhere to the State's Encryption and Information Privacy Policy, which is attached to this Agreement as **Attachment** ___ and hereby incorporated into the Agreement by reference, whenever handling data, documents, records, or any other such information, whether in paper or electronic form, that is provided to Contractor by the State. The Contractor shall ensure that each of its personnel having access to information provided by the State is familiar with this policy and that each of them signs and returns to the State a copy of **Attachment** ___.

5. CONFIDENTIALITY/NONDISCLOSURE

- (a) The Contractor shall protect from unauthorized disclosure all audit and investigative reports and all information in the Contractor's possession that has been gathered or generated in connection with an audit or investigation. Such information shall include financial, statistical, proprietary, market sensitive, highly sensitive, personal, technical, and other information gathered or generated by the Contractor or the State for an audit or investigation. In providing that protection from unauthorized disclosure, the Contractor shall comply with this Paragraph, the provisions of the Confidentiality/Nondisclosure Statement attached to this Agreement as **Attachment** ___, and any other reasonable procedural requirements of the State that are provided in writing to the Contractor.
- (b) Except as required by law or legal process, the Contractor shall not disseminate or disclose publicly the content of any draft or final audit or investigative report and shall not disseminate or disclose publicly any workpapers, records, documents, or other information gathered or generated for any audit or investigation for which the Contractor provided services under this. Notwithstanding this general prohibition against dissemination or disclosure, the Contractor may, with the prior written permission of the State, disclose the content of a final audit or investigative report, specified records, documents, or other information used in support of a final audit or investigative report, or give testimony at a public hearing held by a legislative committee relating to a final audit or investigative report issued regarding an audit or investigation for which the Contractor provided services under the Agreement. The State's grant of permission for the Contractor to make a disclosure or give testimony on a particular occasion shall not be construed to authorize the Contractor to disclose information or give testimony on any other occasion.
- (c) With the exception of comments made to personnel of the California State Auditor's Office and other agencies of the State, the Contractor shall not discuss or provide comment to any individual, including any member of the news media, regarding any audit or investigation for which the Contractor provided services under this Agreement without the prior written consent of the State.

- (d) The Contractor acknowledges and understands that it is a misdemeanor, as provided in Government Code section 8545.1, for any person or business entity that has contracted with the State, any officer or employee of a person or business entity that has contracted with the State, or any former officer or employee of a person or business entity that has contracted with the State to divulge in any manner not expressly permitted by law the particulars of any record, document, or information the disclosure of which is restricted by law. This restriction includes any record, document, or other information reviewed in connection with an audit that is not used in support of a final audit report.
- (e) By signing this Agreement, the Contractor certifies that the Contractor has reviewed the Confidentiality/Nondisclosure Statement attached to the Agreement as **Attachment** __ and agrees to be bound by its provisions. The Contractor also agrees to ensure that each of the Contractor's employees having access to information provided by the State is familiar with the provisions of the Confidentiality/Nondisclosure Statement and that each of them signs and submits to the State a copy of **Attachment** __ prior to performing any services under the Agreement.

6. INDEPENDENCE QUESTIONNAIRE/CONFLICT OF INTEREST DISCLOSURE

The Contractor shall complete a separate Independence Questionnaire/Conflict of Interest Disclosure, attached to this Agreement as **Attachment** __, for each project the Contractor is requested by the State to perform services. The completed Independence Questionnaire/Conflict of Interest Disclosure shall be submitted to the State prior to performing any services on the project.

7. DARFUR CONTRACTING ACT

As required by the Darfur Contracting Act of 2008 (Public Contract Code section 10475 et seq.), the Contractor declares that the Contractor is not a scrutinized company as defined in Public Contract Code section 10476. In support of this declaration, the Contractor has executed the Darfur Contracting Act Certificate which is attached to this Agreement as **Attachment** __ and incorporated into the Agreement.

- (a) It is the policy of the State that anyone who enters into a contract with a state agency shall recognize the importance of child and family support obligations and complies fully with all applicable state and federal laws relating to child and family support enforcement, including the disclosure of information and compliance with earnings assignment orders, as required by Family Code section 5200 et seq.
- (b) To the best of the Contractor's knowledge, the Contractor is complying fully with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

8. CALIFORNIA CIVIL RIGHTS LAWS CERTIFICATION

Pursuant to Public Contract Code section 2010, if a bidder or proposer executes or renews a contract over \$100,000 on or after January 1, 2017, the bidder or proposer certifies compliance by executing the California Civil Rights Laws Certification which is attached to this Agreement as **Attachment** ____.

9. CONTRACTOR'S RÉSUMÉ(S)

The Contractor's completed résumé is required for each contract participant who will exercise a major administrative role or major policy or consultant role, as identified by the Contractor, be attached to the contract for public record and is made a part of the contract as **Attachment** ____.

10. CONTRACT/CONTRACTOR EVALUATION

In accordance with Public Contract Code sections 10367 and 10369, the Contractor's performance or the firm's performance will be evaluated within 60 days of completion of the contract using the Contract/Contractor Evaluation form (STD 4). The ordering agency shall complete a written evaluation, and if the Contractor did not satisfactorily perform the work specified, a copy of the evaluation will be sent to the DGS, Office of Legal Services.

EXHIBIT E - ENCRYPTION AND INFORMATION PRIVACY POLICY

1. BACKGROUND

The theft of portable computing devices, such as laptop computers, is a problem for the State and for private industry. Theft and other loss of portable computing equipment can lead to the compromise of confidential, sensitive, or personal data, which in turn can lead to privacy issues and costly follow-up activities.

- (a) The State continues to experience situations in which confidential, sensitive, or personal data is compromised when an unencrypted electronic device is lost, stolen, or sabotaged. Budget Letter 05-32, issued by the Department of Finance, requires the state agencies under its authority to encrypt any state data that is confidential, sensitive, and personal when it is stored on portable computing devices (including laptops and personal assistive devices) and/or portable electronic storage media (including optical discs and flash memory storage devices). Management Memo 06-12, issued by the Department of General Services, requires all state agencies under its authority to be vigilant to protect personal, sensitive, or confidential information from inappropriate or unauthorized access, use, or disclosure, regardless of media type, and regardless of whether the agency is the custodian or the owner of the information. Protecting personal, sensitive, and confidential data is the responsibility of each individual employee.
- (b) Government Code section 8545.2 grants the California State Auditor's Office a very broad right of access to the records of state agencies and other public entities it is authorized to audit or investigate. Additionally, the State Auditor's Office may receive information from the private sector based on an agreement that it will keep the information confidential. Since the State Auditor's Office has "stand in their shoes" authority over auditee information, and at times receives sensitive information from the private sector, the State Auditor's Office must be vigilant in protecting personal, sensitive, and confidential information from inappropriate or unauthorized access, use, or disclosure, regardless of media type. In addition, the State Auditor's Office is the owner of sensitive information, such as personnel records, and also must be vigilant in protecting those records.
- (c) This policy is not intended to limit the right of the State Auditor's Office to access the records of public entities. Rather, it is intended to establish protocols to minimize the risk that those records are disclosed inadvertently.
- (d) Additionally, because no employee is expected to know every state and federal privacy law, this policy requires the employees of the State Auditor's Office to exercise sound judgment in assessing the sensitive nature of information by asking themselves whether, if the information related to them, they would want it maintained in a secure manner. Where an employee is in doubt about the sensitive nature of information, the employee should err on the side of caution.

2. POLICY

- (a) Whether the State Auditor's Office is the custodian or the owner of the confidential information, all employees must ensure the security and integrity of that information. Individuals of non-governmental entities with whom the State Auditor's Office has contracted also are included under this mandate (Civil Code section 1798.19). This policy pertains to all information assets, including electronic assets and paper assets. The State Auditor's Office has two positions that have primary responsibility for monitoring and enforcing these policies: the Information Security Officer (manager, Information Technology Unit), and the Information Privacy Officer (legal counsel).
- (b) All employees of the State Auditor's Office are responsible for encrypting, or taking equally effective measures to protect, the security of all personal, sensitive, and confidential information that is stored on any portable electronic storage media (including optical discs and flash memory storage devices) and on portable computing devices (including laptop, handheld, and tablet computers).
- (c) This policy applies to all state data, including media owned by employees, vendors, contractors, or researchers, regardless of format or medium. Where state-owned confidential, sensitive, and/or personal information exists, it must not be allowed to be stored on any portable equipment or media that is not protected.
- (d) Personal, sensitive, or confidential information stored on a shared drive on a local area network is not subject to this policy because a drive of this kind is not considered portable.

3. RULES OF CONDUCT

The following is an overview of the rules of conduct the State Auditor's Office follows to protect personal, sensitive, and confidential data.

Responsibilities of all staff

- (a) All electronic transmittals of personal, sensitive, or confidential information between staff of the State Auditor's Office and auditees or contractors, including editors, must be encrypted.
- (b) Staff must limit the gathering of data to only what is relevant and necessary, redact extraneous information whenever possible, and where appropriate, label workpapers as nonpublic.
- (c) Because we often are unaware of whether auditee files contain personal, sensitive, or confidential information at the time we receive them, before personally obtaining electronic data from an auditee, staff should work with their and the auditee's information technology personnel to ensure that the data is encrypted before staff accepts custody. The State Auditor's Office has external hard drives and flash drives available for its use.
- (d) Staff may work only with secure servers while away from the office.

- (e) Staff must ensure that all hard drives and other storage devices and external media, including flash drives, are encrypted.
- (f) Staff must follow the protocols of the State Auditor's Office for password protection, which requires at least eight characters, including numbers and symbols, and changing passwords at least every forty-two (42) days. Staff should employ strong passwords. A strong password conforms to the following parameters:
 - 1. It is never shared with anyone else.
 - 2. It is at least eight (8) characters in length.
 - 3. It uses at least one (1) character from each of the following character types:
 - a. Lower case letter (e.g. a).
 - b. Upper case letter (e.g. B).
 - c. Number (e.g. 3).
 - d. Punctuation mark or symbol (e.g. \$).
 - 4. It is easy to remember, but not easily guessable or related to staff (such as a social security number, address, or telephone number).
- (g) Staff assigned to audits that will involve gathering personal and confidential information, as defined below, must meet with the Information Security Officer (ISO) and the Information Privacy Officer (IPO) or the Contractor's equivalents prior to gathering the data. Investigations and ITAS staff of the State Auditor's Office must meet annually with the ISO and IPO.
- (h) An audit team's need to collect personal, confidential, or sensitive information, as defined below, should be discussed at the audit's kick-off meeting and thereafter if an audit requires the late collection of information of that nature.
- (i) All audit staff with access to personal and confidential information must certify in writing, prior to accessing such data, that they are aware of the nature of the data, and have reviewed, understand, and agree to adhere to the Rules of Conduct as specified in this section of the policy. This will occur at the meeting with the ISO and IPO or the Contractor's equivalents.
- (j) Each audit team leader is responsible for developing and updating a written list of staff (including obtaining the signatures of those staff), who are authorized to access any personal data on an audit.
- (k) Laptops left in hibernation or sleep mode, or not turned off at all, are the most vulnerable to attack. Staff must shut down any computer equipment containing personal, sensitive, or confidential data completely if they will be away from their work area overnight or for several hours during the business day. This requires that employees who leave the office without turning off their computers return to the office to shut down their computers before ending the work day. While in the office, when employees leave their desks for short periods, they must comply with the state policy of locking their computers by simultaneously pressing the Ctrl-Alt-Delete keys. While the office typically is well-attended during the day, staff should be mindful that their coworkers are not responsible for guarding staff

computers. Therefore, staff should exercise sound judgment when leaving computer terminals and work stations, particularly when persons who are not employees of the State Auditor's Office are present or may have access to the computers. Additionally, when working out of the office, employees should shut down computers completely while away from their desks for thirty (30) minutes or more.

- (l) Staff must use secure methods to transport data (i.e. carry-on luggage when traveling, or other secure transmittal methods).
- (m) Staff only may use the computer equipment of the State Auditor's Office or the Contractor to receive, store, and transmit electronic information.
- (n) Staff must preserve the "chain of custody" of personal and confidential data, whether it is in an electronic or hard-copy format. Chain of custody means staff constantly is aware of, has carefully documented the location of, and has carefully documented the names of the persons responsible for the data from the time it leaves the custody of an auditee until we have completed our work with the data. Depending on the type of information involved, preserving a chain of custody may require that witnesses be present when information is exchanged or accounted for. It also requires that staff carry-on, not check, the equipment and information of the State Auditor's Office when travelling.
- (o) Staff must transfer records gathered from state agencies and stored on laptops to the secure network drives of the State Auditor's Office or the Contractor as soon as practicable.
- (p) When working out of the office, staff must secure all workpapers and other personal, sensitive, or confidential materials, regardless of format or media, when away from their desks. When working in the office, every employee must secure all materials containing personal and confidential data before leaving the office at night and prior to leaving the office during business hours when it is possible that the employee may not return to work that day. Additionally, when management has determined that only certain employees will have access to information because of its sensitive nature, staff must ensure that such information is secured whenever it is left unattended by those authorized to access it, even during business hours and while working in the office. Staff should use locked file cabinets, locking foot lockers, and, where available, manual door locks for purposes of securing workpapers and materials. Audit team leaders should make use of keys available for team rooms, obtaining them from the receptionist and returning them after they finish using the rooms.
- (q) Any unauthorized acquisition of data that compromises the security, confidentiality, or integrity of personal information maintained by the State Auditor's Office or the Contractor on behalf of, or in the course of doing business with, the State Auditor's Office (hereinafter "breach of security" or "breach") by the State Auditor's Office, the Contractor, or an auditee must be reported immediately to the ISO and IPO. Additionally, upon identifying a potential violation of this policy, staff must notify the ISO and IPO promptly about the

potential security risk. When directed to do so, staff, with assistance from legal counsel, must prepare a management letter that discloses the nature of the security risk that the State Auditor's Office has identified.

- (r) Staff, assisted by the IT Unit, must shred all backup and hard-copy personal, sensitive, and confidential materials when they no longer are needed.
- (s) Staff, assisted by the IT Unit, must ensure that personal, sensitive, or confidential data on discs, flash drives, and other external media are overwritten before the discs are discarded. As documentation of this, staff is required to sign and complete the Information Technology Addendum to Job File Checklist (AUD-310) at the end of an audit assignment.
- (t) Staff, assisted by the IT Unit, is responsible for ensuring that the electronic information security systems of the State Auditor's Office limit access to personal, sensitive, or confidential information to those who need access and to those who have a right of access, as appropriate.

Responsibilities of the IT Unit

- (a) The IT Unit ensures that all computers and hard drives are overwritten when they are discarded.
- (b) The IT staff certifies, in writing, that it is responsible for: (1) implementing the necessary technical means to preserve the security, privacy, and integrity of the information assets of the State Auditor's Office and managing the risks associated with those assets; and (2) acting as a custodian of information, as described by the Department of General Services in the State Administrative Manual (SAM) at section 5315.1, for the agencies under its authority.

Responsibilities of other staff of the State Auditor's Office

- (a) A deputy state auditor must confirm that a departing employee has certified, in writing, that all confidential, personal, and sensitive data handled by the departing employee has been destroyed, transferred to a supervisor, or otherwise secured properly before the employee proceeds with final checkout.
- (b) Laptops and other electronic devices assigned to staff of the State Auditor's Office, as well as work areas, are subject to periodic inspection by the ISO to ensure compliance with these protocols. As part of the ongoing audit and evaluation process of the State Auditor's Office to ensure adherence to the information privacy program, the ISO or the ISO's delegates perform random inspections of all workspaces and devices.
- (c) The ISO and IPO will investigate all information security breaches and handle any notifications that may be required, as indicated in the information privacy guidelines of the State Auditor's Office.
- (d) The ISO and the IPO will conduct mandatory annual privacy and security training classes for all staff of the State Auditor's Office. The State Auditor, or the State Auditor's designee, will certify annually that 100 percent of her staff has attended the training.

4. DEFINITIONS

For the purposes of this policy, **Personal information** is information that identifies or describes an individual, including the name, physical description, home address, home telephone number, education, financial matters, and medical or employment history of the individual, as well as statements made by or attributed to the individual (Civil Code section 1798.3). Personal information is particularly sensitive and must be protected from inappropriate access, use, or disclosure and made accessible to its subjects upon request. Additional examples of personal information are contained in the statutes listed below, which are not intended to constitute an exhaustive list:

- (a) Notice-triggering personal information – specific items of personal information, regardless of media or format (first name or first initial and last name in combination with social security number, driver's license/California identification card number, financial account, credit card or debit card number in combination with any security code, access code or password that would permit access to an individual's financial account, medical information, health insurance information, or information or data collected through the use or operation of an automated license plate recognition system) that may trigger a requirement to notify individuals if an unauthorized person acquires it (Civil Code section 1798.29);
- (b) Protected Health Information – individually identifiable information regarding a patient's medical history, mental or physical condition, or treatment created, received, or maintained by such organizations as health care payers, pharmaceutical companies, health care providers, health plans, and contractors to these entities, in electronic or physical form. State law requires special precautions to protect such data from unauthorized use, access, or disclosure (Confidentiality of Medical Information Act, Civil Code section 56 et seq. and the Patients' Access to Health Records Act, Health and Safety Code sections 123100-123149.5); and
- (c) Electronic Health Information – individually identifiable health or health billing information transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. Federal regulations require state entities that are health plans, health care clearinghouses, or health care providers that conduct electronic transactions ensure the privacy and security of electronic protected health information from unauthorized use, access, or disclosure (See Health Insurance Portability and Accountability Act (HIPAA), 45 C.F.R. parts 160 and 164). HIPAA imposes stiff penalties and requires notice to consumers if protected data is accessed by unauthorized persons.

Sensitive information is information maintained by state agencies that requires special precautions to protect it from unauthorized use, access, disclosure, modification, loss, or deletion. Sensitive information may be either public or confidential. It is information that requires a higher than normal assurance of accuracy and completeness. Thus, the key factor for sensitive information is that of integrity. Typically, sensitive information includes records of agency financial transactions and regulatory actions.

Confidential information is information maintained by state agencies that is exempt from disclosure under the provisions of the California Public Records Act (Government Code sections 6250-6265) or other applicable state or federal laws. For purposes of this policy only, materials generated by the State Auditor's Office that do not contain any person's personal or confidential data are not confidential.

Additional Resources. The State Administrative Manual, Chapter 5300, includes statewide policies, procedures, regulations, and information about security. It can be found at the [Department of General Services](#) and the [Department of Technology](#).

5. ACKNOWLEDGMENT

The Contractor acknowledges receipt of and shall comply with the California State Auditor's policy on data encryption and information privacy. Please sign the certification below. If you have any questions or concerns regarding this policy, please contact **Jeremy Evans**, ISO, or **Heather Kendrick**, IPO.

Company/Firm Name

Print Name

Signature

Date

EXHIBIT G - INDEPENDENCE QUESTIONNAIRE/CONFLICT OF INTEREST DISCLOSURE

Independence Questionnaire for _____
(Type or write consultant's name.)

Government Auditing Standards (GAO 18-568G) require that auditors be independent. The Contractor and all personnel must be independent. Independence comprises independence of mind and appearance. To ensure that the independence standard is met, each Contractor must disclose any threats to independence related to the entities or programs listed below.

Partner Agencies

1. Department of FI\$Cal
2. Department of Finance
3. Department of General Services
4. State Controller's Office
5. State Treasurer's Office

State Entities with Material to the Comprehensive Annual Financial Report

1. California Air Resources Board
2. California Community Colleges Board of Governors
3. California Department of Developmental Services
4. California Department of Education
5. California Department of Insurance
6. California Department of Resources Recycling and Recovery
7. California Department of Social Services
8. California Department of Tax and Fee Administration
9. California High-Speed Rail Authority
10. California Highway Patrol
11. California Student Aid Commission
12. Department of Health Care Services
13. Employment Development Department
14. Franchise Tax Board

1. Do you have any of the following threats to independence? If you respond yes to any item, please describe the threat on the next page or attach a separate sheet.
 - (a) Self-interest threat—the threat that a financial or other interest will inappropriately influence an auditor's judgement or behavior. For example, seeking employment with an entity; biases about policies or preconceived notions about the programs; or financial interest that is direct, or is significant/material, though indirect, in the audited entity.
 - (b) Self-review threat—the threat that an auditor or audit organization that has provided nonaudit services will not appropriately evaluate the results of previous

judgements made or services performed as part of the nonaudit services when forming a judgement significant to an audit.

- (c) Bias threat—the threat that an auditor will, as a result of political, ideological, social, or other convictions, take a position that is not objective. For example, a decision-making role that could affect the entity’s operations, or biases about policies or preconceived notions about the programs.
- (d) Familiarity threat—the threat that aspects of a relationship with management or personnel of an audited entity, such as a close or long relationship, or that of an immediate or close family member, will lead an auditor to take a position that is not objective. For example, a family member who is a director, officer, or employee, and is in a position to exert direct and significant control over of the audited entity or program.
- (e) Undue influence threat—the threat that external influences or pressures will impact an auditor’s ability to make independent and objective judgements. Undue influence threats are external pressures, actual or perceived, from management or employees of the audited entity that would deter the auditor from acting objectively and exercising professional skepticism.
- (f) Management participation threat—the threat that results from an auditor taking on the role of management or otherwise performing management functions on behalf of the entity undergoing an audit.

Respond to question 1 here.

2. Do you have any threats to independence as described above that would restrict your work or interfere with your ability to form independent and objective conclusions? If you respond yes, describe the threat(s).

3. For the threat(s) identified in questions 1 and 2 above, please describe the actions you would take to mitigate the threat.

4. In the last five years, has your firm or any staff whom you plan to assign to this audit been a party to any contract with any of the entities listed? If you respond yes, provide a copy of the statement of work.

5. Are you currently seeking employment, pursuing, or do you plan to pursue a contract with any of the entities listed during the term of the contract? If you respond yes, please explain.

Company/Firm Name

Print Name

Signature

Date

EXHIBIT H - CONFIDENTIALITY/NONDISCLOSURE AGREEMENT

1. CONFIDENTIALITY/NONDISCLOSURE STATEMENT

The undersigned acknowledges and agrees that the contents of any personal, technical, and other data and information relating to the State's operations that are made available to the Contractor in carrying out this Agreement, or that become available to the Contractor in carrying out this Agreement, are confidential and shall be protected by the Contractor from unauthorized use or disclosure, as described in this Agreement. In providing that protection, Contractor shall comply with this Agreement and any other procedural requirements of the State that are provided in writing to the Contractor. In that regard, the undersigned acknowledges and agrees to all of the following:

- (a) The work products and records, documents, or information used in support of the work products that are made available to the Contractor pursuant to this Agreement, including, but not limited to, all personal, technical, and other data and information used in support of or contained in those work products, are confidential and shall be protected by the Contractor from unauthorized use or disclosure. In providing that protection, Contractor shall comply with this subdivision and any other procedural requirements of the California State Auditor that are provided in writing to the Contractor.
- (b) Contractor shall not disclose data or disseminate the contents of any preliminary or final work product or records, documents, or information used in support of the work product without the written permission of the California State Auditor.
- (c) With the exception of comments made about the work product to the State Auditor or her staff, Contractor shall not make comments to any individual, including, but not limited to, any member of the media regarding the work product, nor shall Contractor comment on the State Auditor's actions regarding the work product, without the prior written consent of the State Auditor.
- (d) Contractor acknowledges that it is a misdemeanor for the California State Auditor or any employee or former employee of the California State Auditor to divulge in any manner not permitted by law, the particulars of any record, document, or information the disclosure of which is restricted by law. This restriction includes, but is not limited to, records, documents, or information reviewed in connection with the work product that are not used in support of the final work product. This prohibition also applies to any person or business entity and to the employees and former employees of this person or business entity that has assisted the State Auditor in the course of a work product or that has been furnished a draft copy of a work product for comment and review (Government Code section 8545.1).

2. CONFIDENTIALITY/NONDISCLOSURE ACKNOWLEDGMENT

(To be completed by each of Contractor's personnel)

The undersigned Contractor acknowledges that he/she has been provided with a copy of the Confidentiality/Nondisclosure Statement between State and Contractor (Agreement) and understands that any records, documents, and information, or any draft or final audit report that the undersigned reviews or produces in connection with providing auditing services to the California State Auditor, are subject to the terms of the Agreement.

Company/Firm Name

Print Name

Signature

Date

EXHIBIT I - CONTRACTOR CERTIFICATION CLAUSES (CCC 04/2017)

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

Contractor/Bidder Firm Name (Printed)		Federal ID Number
By (Authorized Signature)		
Printed Name and Title of Person Signing		
Date Executed	Executed in the County of	

1. **STATEMENT OF COMPLIANCE:** Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Government Code section 12990 (a-f) and California Code of Regulations, Title 2, section 11102) (Not applicable to public entities.)
2. **DRUG-FREE WORKPLACE REQUIREMENTS:** Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:
 - (a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
 - (b) Establish a Drug-Free Awareness Program to inform employees about:
 - 1) The dangers of drug abuse in the workplace.
 - 2) The person's or organization's policy of maintaining a drug-free workplace.
 - 3) Any available counseling, rehabilitation and employee assistance programs.
 - 4) Penalties that may be imposed upon employees for drug abuse violations.
 - (c) Every employee who works on the proposed Agreement will:
 - 1) Receive a copy of the company's drug-free workplace policy statement.
 - 2) Agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the

department determines that any of the following has occurred: the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (Government Code section 8350 et seq.)

3. **NATIONAL LABOR RELATIONS BOARD CERTIFICATION:** Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (Public Contract Code section 10296) (Not applicable to public entities.)
4. **EXPATRIATE CORPORATIONS:** Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code section 10286 and 10286.1, and is eligible to contract with the State of California.
5. **DOMESTIC PARTNERS:** For contracts of \$100,000 or more, Contractor certifies that Contractor is in compliance with Public Contract Code section 10295.3.
6. **GENDER IDENTITY:** For contracts of \$100,000 or more, Contractor certifies that Contractor is in compliance with Public Contract Code section 10295.35.

DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

1. **CONFLICT OF INTEREST:** Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the State Auditor must be contacted immediately for clarification.

Current State Employees (Public Contract Code section 10410):

- 1) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- 2) No officer or employee shall contract on his or her own behalf as an independent Contractor with any state agency to provide goods or services.

Former State Employees (Public Contract Code section 10411):

- 1) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- 2) For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state

agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Public Contract Code section 10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Public Contract Code section 10430 (e))

2. **LABOR CODE/WORKERS' COMPENSATION:** Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code section 3700)
3. **AMERICANS WITH DISABILITIES ACT:** Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 United States Code 12101 et seq.)
4. **CONTRACTOR NAME CHANGE:** An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.
5. **CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:**
 - (a) When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the Contractor is currently qualified to do business in California in order to ensure that all obligations due to the State are fulfilled.
 - (b) "Doing business" is defined in Revenue and Taxation Code section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate Contractor performing within the State not be subject to the franchise tax.
 - (c) Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

6. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.
7. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other governmental entity.

STATE OF CALIFORNIA-DEPARTMENT OF FINANCE

PAYEE DATA RECORD

(Required when receiving payment from the State of California in lieu of IRS W-9 or W-7)
STD 204 (Rev. 5/2018)

1	<p>Requirement to Complete the Payee Data Record, STD 204</p> <p>A completed Payee Data Record, STD 204 form, is required for all payees (non-governmental entities or individuals) entering into a transaction that may lead to a payment from the state. Each state agency requires a completed, signed, and dated STD 204 on file; therefore, it is possible for you to receive this form from multiple state agencies with which you do business.</p> <p>Payees who do not wish to complete the STD 204 may elect not to do business with the state. If the payee does not complete the STD 204 and the required payee data is not otherwise provided, payment may be reduced for federal and state backup withholding. Amounts reported on Information Returns (Form 1099) are in accordance with the Internal Revenue Code (IRC) and the California Revenue and Taxation Code (R&TC).</p>
2	<p>Enter the payee's legal business name. The name must match the name on the payee's tax return as filed with the federal Internal Revenue Service. Sole proprietorships and single member limited liability companies (LLCs) must also include the owner's full name. An individual must list his/her full name as shown on the SSN or as entered on the W-7 form for ITIN.</p> <p>The mailing address should be the address at which the payee chooses to receive correspondence. The business address is the address of the business' physical location.</p>
3	<p>Check only one box that corresponds to the payee business type. Corporations must check the box that identifies the type of corporation.</p> <p>The State of California requires that all parties entering into business transactions that may lead to payment(s) from the state provide their Taxpayer Identification Number (TIN). The TIN is required by the R&TC sections 18646 and 18661 to facilitate tax compliance enforcement activities and the preparation of Form 1099 and other information returns as required by the IRC section 6109(a) and R&TC section 18662 and its regulations.</p> <p>Payees must provide one of the following TINs on this form: social security number (SSN), individual taxpayer identification number (ITIN), or federal employer identification number (FEIN). The TIN for sole proprietorships, single member LLC (disregarded entities), and individuals is the SSN or ITIN. Only partnerships, estates, trusts, corporations, and LLCs (taxed as partnerships or corporations) will enter their FEIN.</p>
4	<p>Are you a California resident or nonresident?</p> <p>A corporation will be defined as a "resident" if it has a permanent place of business in California or is qualified through the Secretary of State to do business in California.</p> <p>A partnership is considered a resident partnership if it has a permanent place of business in California. An estate is a resident if the decedent was a California resident at time of death. A trust is a resident if at least one trustee is a California resident.</p> <p>For individuals and sole proprietors, the term "resident" includes every individual who is in California for other than a temporary or transitory purpose and any individual domiciled in California who is absent for a temporary or transitory purpose. Generally, an individual who comes to California for a purpose that will extend over a long or indefinite period will be considered a resident. However, an individual who comes to perform a particular contract of short duration will be considered a nonresident.</p> <p>Payments to all nonresidents may be subject to withholding. Nonresident payees performing services in California or receiving rent, lease, or royalty payments from property (real or personal) located in California will have 7% of their total payments withheld for state income taxes. However, no withholding is required if total payments to the payee are \$1,500 or less for the calendar year.</p> <p>For information on Nonresident Withholding, contact the Franchise Tax Board at the numbers listed below: Withholding Services and Compliance Section: 1-888-792-4900 E-mail address: wscs.gen@ftb.ca.gov For hearing impaired with TDD, call: 1-800-822-6268 Website: www.ftb.ca.gov</p>
5	Provide the name, title, email address, signature, and telephone number of the individual completing this form. Provide the date the form was completed.
6	This section must be completed by the state agency requesting the STD 204.

Privacy Statement

Section 7(b) of the Privacy Act of 1974 (Public Law 93-579) requires that any federal, state, or local governmental agency, which requests an individual to disclose their social security account number, shall inform that individual whether that disclosure is mandatory or voluntary, by which statutory or other authority such number is solicited, and what uses will be made of it.

It is mandatory to furnish the information requested. Federal law requires that payment for which the requested information is not provided is subject to federal backup withholding and state law imposes noncompliance penalties of up to \$20,000.

You have the right to access records containing your personal information, such as your SSN. To exercise that right, please contact the business services unit or the accounts payable unit of the state agency(ies) with which you transact that business.

All questions should be referred to the requesting state agency listed on the bottom front of this form.